California State Senate

LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

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AGENDA

Wednesday, April 26, 2023
9:30 a.m. -- 1020 N Street, Room 100
(Please note room change)

MEASURES HEARD IN FILE ORDER

1.	SB 686	Durazo	Domestic workers: occupational safety.
2.	SB 723	Durazo	Employment: rehiring and retention: displaced workers.
3.	SB 276	Seyarto	Workweek: overtime: legislative employees.
4.	SB 300	Seyarto	Public employees' retirement: fiscal impact: information.
5.	SB 322	Becker	Zero-Emission Vehicle Battery Manufacturing Block Grants Program.
6.	SB 382	Becker	California Workforce Pay for Success Act.
7.	SB 375	Alvarado-Gil	Employment: employer contributions: employee withholdings: COVID-19 regulatory compliance credit.
8.	SB 422 **(CONSENT)**	Portantino	California Environmental Quality Act: expedited environmental review: climate change regulations.
9.	SB 765	Portantino	Teachers: retired teachers: teacher preparation: student financial aid.
10.	SB 526	Limón	Department of Industrial Relations: domestic violence prevention.
11.	SB 534	Padilla	Equitable Access to Job Opportunity Pilot Program.
12.	SB 685	Hurtado	Apprenticeship Innovation Funding Program: AgTech.
13.	SB 700	Bradford	Employment discrimination: cannabis use.
14.	SB 703	Niello	Employment: work hours: flexible work schedules.
15.	SB 327 **(CONSENT)**	Laird	State teachers' retirement: disability allowances and benefits.
16.	SB 830	Smallwood-Cuevas	Public works.
17.	SB 432 **(CONSENT)**	Cortese	Teachers' retirement.

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

Bill No:	SB 686	**Hearing Date:**	April 26, 2023
Author:	Durazo		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Domestic workers: occupational safety

KEY ISSUES

Should the Legislature remove the "household domestic service" exemption from the Occupational Safety and Health Act definition of employment, thereby applying all of its requirements and obligations on household domestic service employers?

Should the Division of Occupational Safety and Health (Cal/OSHA) be required to adopt industry guidance to assist household domestic service employers understand their legal obligations under existing occupational safety and health laws and regulations that would now apply to them?

Should all household domestic services employers be required to comply with, and adhere to, all applicable occupational safety and health regulations by January 1, 2025?

Should the Legislature appropriate funds to establish a Household Domestic Services Employment Safety and Technical Assistance program for the purpose of providing one-time grants and technical assistance to household domestic service employers demonstrating financial hardship in ensuring a safe working environment for their employees?

ANALYSIS

Existing law:

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

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

3) Defines a place of employment as "**any place**, and the premises appurtenant thereto, where employment is carried on, except a place where the health and safety jurisdiction is vested by law in, and actively exercised by, any state or federal agency other than the division. (Labor Code §6303(a)).

4) Establishes that the jurisdictional reach of Cal/OSHA's enforcement extends to "**every employment and place of employment in this state**, which is necessary adequately to enforce and administer all laws and lawful standards and orders, or special orders requiring such employment and place of employment to be safe, and requiring the protection of the life, safety, and health of every employee in such employment or place of employment." (Labor Code §6307).

5) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that is written, except as specified, and shall include, among other things, the following elements (Labor Code §6401.7):

   a. A system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
   b. The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
   c. An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.
   d. The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.

6) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)

7) Requires Cal/OSHA, if the division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the employment or place of employment, with or without notice or hearings. Certain timeframes exist if a complaint is deemed to allege a serious violation. (Labor Code §6309)

8) Defines, for purposes of OSHA, "employment" to include the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, **except household domestic service.** (Labor Code §6303)

9) Defines "domestic work" as services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids and other household occupations. (Labor Code §1451)

10) Establishes within DIR, the Division of Fair Labor Standards Enforcement (DLSE) lead by the Labor Commissioner, tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)

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

12) Under the Domestic Worker Bill of Rights, regulates the hours of work of certain domestic work employees and provides an overtime compensation rate for those employees. Specifically, the law provides that a domestic work employee who is a personal attendant shall not be employed more than nine hours in any workday or more than 45 hours in any workweek unless the employee receives one and one-half times the employee's regular rate of pay for all hours worked over nine in a day and 45 in a workweek. (Labor Code §1450-1454)

13) Requires the chief of Cal/OSHA, or a representative, to convene an advisory committee (since named Domestic Services Employment Safety Committee) for the purposes of creating ***voluntary guidance and making recommendations*** to the Department of Industrial Relations and the Legislature on policies the state may adopt to protect the health and safety of privately funded household domestic service employees. Requires the advisory committee to develop voluntary industry-specific occupational health and safety guidance for the purpose of the following:

    a. Educating household domestic service employees on how, to the extent possible, they may identify and evaluate workplace hazards and prevent or minimize work-related injuries and illnesses.
    b. Educating household domestic service employers on how they may create safer workplaces by identifying and evaluating workplace hazards and how to prevent or minimize work-related injuries and illnesses for their employees.
    (Labor Code §6305.1)

14) In making these recommendations, the advisory group shall consider the following:
    a. How to protect the privacy of individuals who employ domestic workers in their private residences in the context of future potential enforcement of health and safety standards, orders, and regulations, including applicability to household domestic service employers of the existing civil monetary penalty structure for violations.
    b. Identifying and evaluating common workplace hazards specific to the industry.
    c. The scope and applicability of existing regulations to the industry.
    d. The need to develop industry-specific requirements.
    e. How to conduct training and outreach to employers and employees in the industry.
    (Labor Code §6305.1)

15) Requires the Division of Labor Standards Enforcement, upon appropriation and until June 30, 2024, to establish and maintain an outreach and education program to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards in this industry and other low-wage industries. As part of the program, authorizes:
    a. Cal/OSHA to issue competitive request to Community Based Organizations (CBOs) to provide education and outreach services, as specified.

b. CBOs to be responsible for developing, and consulting with CalOSHA on, the core education and outreach materials regarding minimum wage, overtime, sick leave, record-keeping, retaliation, and the division wage adjudication and retaliation process, including specific issues that affect certain industries, such as the domestic work industry, differently.
c. CBOs to be responsible for all costs related to the development, printing, advertising, or distribution of the education and outreach materials. The materials shall be translated into non-English languages as may be appropriate, as determined by the applicable CBO in consultation with the division. At the discretion of the division, the division shall have final approval over the education and outreach materials
(Labor Code §1455)

This bill:

1) Makes findings and declarations highlighting, among other things, the challenges faced by domestic workers and the need to remove the household domestic services exclusion from the definition of employment.

2) Amends the definition of "employment" under existing law to, except as specified, ***remove the household domestic service exception***, thereby applying all Occupational Safety and Health Act provisions to domestic workers and their employers.

3) Specifies that "employment" does not include either of the following:

a. Household domestic service that is publicly funded, including service provided to a recipient, client, or beneficiary with a share of cost in that service, unless subject to Section 3342 or 5199 of Title 8 of the California Code of Regulations.
b. Family daycare homes, as defined.

4) Requires that Cal/OSHA, by July 1, 2024, adopt industry guidance, consistent with the voluntary guidelines established by the Household Domestic Services Employment Safety Committee, to assist household domestic service employers on their legal obligations under existing occupational safety and health laws and regulations that apply to the work activity of household domestic service employees.

5) Requires household domestic services employers to comply with, and adhere to, all applicable occupational safety and health regulations by January 1, 2025.

6) If the division determines that additional industry-specific regulations are necessary, authorizes Cal/OSHA to propose those regulations to the standards board for its review and the standards board shall adopt regulations by January 1, 2026.

7) Modifies the domestic worker outreach and education provisions in existing law to:

a. Eliminate the July 1, 2024 inoperative and January 1, 2025 repeal date on the provisions, thereby making the program permanent.
b. Specify that CBOs will be responsible for developing and consulting with Cal/OSHA regarding the core education and outreach materials on health and safety standards, retaliation, and the division's workplace safety complaint and retaliation process, including specific issues that affect the domestic work industry differently.

c. Specify that CBOs will be responsible for all costs related to the development, printing, advertising, or distribution of the education and outreach materials.
d. Require the materials to be translated into non-English languages as may be appropriate, as determined by the applicable CBO in consultation with Cal/OSHA.
e. On and after July 1, 2024, require the Chief of Cal/OSHA, representatives of the consultation services and enforcement branches and CBOs to meet quarterly, as specified, to coordinate efforts around outreach, education, and enforcement, including sharing information, in accordance with applicable privacy and confidentiality laws, that will *shape and inform* the overall enforcement, education, and outreach strategies of Cal/OSHA regarding the domestic work industry.
f. Specifies that both the DLSE and Cal/OSHA shall not expend more than 5 percent of the budget allocation on the administration of the program.

8) Requires Cal/OSHA to establish and administer, upon appropriation of funds by the Legislature, the Household Domestic Services Employment Safety and Technical Assistance Program for the purpose of providing one-time grants and technical assistance to household domestic service employers. Specifically, the assistance program would:

    a. Provide financial assistance to household domestic service employers that have demonstrated financial hardship in ensuring a safe working environment for household domestic service employees.
    b. Authorizes funds to be used for tools, supplies, equipment, or physical alteration of the home to promote and protect the health and safety of domestic workers.
    c. Authorize technical assistance to be provided directly by division staff or through a contracted community-based organization.
    d. Prohibit Cal/OSHA from expending more than 5 percent of the budget allocation on the administration of the program.
    e. Commence by July 1, 2024, and continue until July 1, 2029, with an opportunity to expand or renew contingent on the additional allocation of state funds or identification of other revenue sources.

COMMENTS

1. Background: Domestic Worker Exclusion from Certain Employment Protections

In California, every employer has a legal obligation to provide and maintain a safe and healthful workplace for their employees. Under existing law, employers must have a written Injury and Illness Prevention Program that must be developed and implemented effectively by employers. Additionally, Cal/OSHA has a duty and authority to investigate workplaces for the safety and welfare of employees, either on its own motion or upon complaints. Additionally, Cal/OSHA is required to compile each year data pertaining to complaints received and citations issued and post it on its website.

Historically domestic workers have been excluded from occupational safety and health laws as well as many other worker protections. The reasons are related to the nature of the work, who performs the work, and a long history of treating these workers as an extension of the "household." Domestic workers are amongst one of the most vulnerable and unprotected categories of workers. Many domestic workers may lack decent working conditions compounded with the fact that the sector often encompasses disadvantaged groups,

including immigrants where language barriers pose additional challenges. A June 2020 report from the UCLA Labor and Occupational Safety and Health Program found that 85% of domestic workers surveyed experience musculoskeletal injuries that are associated with chronic pain. Many respondents reported continuing to work through their injuries for fear of job or financial loss.[1] Many of these injuries could be prevented by appropriate health and safety guidance that specifically targets this industry, both the domestic worker and the domestic worker employers.

The concept of removing the domestic worker exclusion from the definition of "employment" for OSHA purposes has been the subject of several bills dating back to AB 889 (Ammiano) in 2011. The first successful change to the industry was in 2013, when AB 241 (Ammiano) enacted the Domestic Worker Bill of Rights to regulate the hours of work of certain domestic work employees and provide an overtime compensation rate for these workers who were not previously entitled to overtime compensation. AB 241 included a January 1, 2017 sunset date on its provisions that was later removed by SB 1015 (Leyva) in 2016, making the overtime requirements permanent.

More recently, in 2019, SB 83 (Committee on Budget and Fiscal Review) established the domestic worker outreach and education program within DLSE to promote awareness of, and compliance with, labor protections that affect the domestic work industry. In 2021, SB 321 (Durazo) required that Cal/OSHA convene an advisory committee to provide voluntary guidance and make recommendations on policies the state may adopt to protect the health and safety of privately funded household domestic service employees. This bill also required Cal/OSHA to release and publicly post a report of the advisory committee on its internet website and submit a copy to the Legislature by January 1, 2023.

2. SB 321 Committee Policy Recommendations to Protect the Health and Safety of Household Domestic Services Employees:

As noted above, in 2021, Governor Gavin Newsom signed into law SB 321 (Durazo) which required the Chief of Cal/OSHA to convene an advisory committee composed of key stakeholders in this industry. The purpose of the advisory committee was to provide policy recommendations to the Department of Industrial Relations (DIR) and the California Legislature on policies the state may adopt to protect the health and safety of privately-funded household domestic service employees, along with drafting **voluntary** industry-specific guidelines for the purpose of educating household domestic service employers and workers.

The SB 321 Advisory Committee was made up of individuals who represent key stakeholders, including employers, workers, non-profit advocates, and health and safety experts. The outputs of their meetings are the policy recommendations and industry guidelines put forth by the Advisory Committee based on their discussions, literature reviews, review of existing policies, and input from experts in the field, workers, employers, and the public. Both the guidelines (*Voluntary Industry Guidelines to Protect the Health and Safety of Domestic Workers and Day Laborers*[2]) and report (*SB 321 Committee Policy*

[1] UCLA Labor and Occupational Safety and Health Program, "Hidden Work, Hidden Pain: Injury Experience of Domestic Workers in California," June 2020.

[2] SB 321 Advisory Committee Voluntary Industry Guidelines. https://www.dir.ca.gov/dosh/documents/Voluntary-Industry-Guidelines-SB-321.pdf

Recommendation to Protect the Health and Safety of Household Domestic Services Employees[3]) on recommendations have been released by DIR and made available on their website.

The report to DIR and the Legislature was released in December 2022 with recommendations that are grouped into four categories:

- Legal Responsibilities and Enforcement
- Support for Employer Compliance
- Outreach and Education
- Partnerships with Community Organizations

Among its recommendations for **advancing the Advisory Committee's view** of the fundamental need for employers to have legal responsibility for the working conditions of domestic workers, the committee recommended:

1) Remove the household domestic services exclusion from the California Labor Code.
2) Once removed, DIR and Cal/OSHA shall enforce health and safety regulations.
3) Implement an industry-specific system for investigation and enforcement.
4) Develop and fund a pilot mediation program.
5) Maintain the existing civil monetary penalty structure for health and safety violations.
6) Create a liaison position within Cal/OSHA and train Cal/OSHA staff.
7) Uphold robust anti-retaliation protections for workers who speak out.

3. Need for this bill?

According to the author, "Domestic workers are often put at severe risk of injury or illness, especially when public health emergencies and natural disasters strike. These workers provide front-line care to California's most vulnerable, like seniors and people with compromised immune systems, yet they often remain without any health and safety protections. One year into the pandemic, domestic workers were three times more likely to have contracted COVID-19 than the general population in California, putting their lives at risk as well as their families and communities.

Senate Bill 686 will establish health and safety protections for domestic workers under California's Occupational Safety and Health Act (Cal/OSHA). Additionally, the bill will provide for health and safety outreach and education for domestic service employees and employers and establish a financial and technical assistance program for domestic service employers."

4. Proponent Arguments:

According to the California Immigrant Policy Center, one of the co-sponsors of the measure, "In California, there are over 300,000 domestic workers, 75 percent of whom are immigrant women of color, who have been historically excluded from the most basic labor protections. Some of our key federal labor laws – the National Labor Relations Act, the Fair Labor Standards Act, and the Occupational Safety and Health Act – have at some point, if not

[3] SB321 Committee Policy Recommendations Report – December 2022. https://www.dir.ca.gov/dosh/documents/Policy-Recommendations-SB-321.pdf

currently, excluded these workers, as a result of the ongoing legacy of slavery and historical discrimination against black women workers. In addition, our federal and state laws' failure to recognize domestic work as real work has left domestic service workers particularly vulnerable to workplace injuries and illness, with little recourse.

Climate accelerated disasters have also magnified the vulnerability and dangers that domestic workers and day laborers face on a daily basis. During the wildfires that devastated California, domestic workers and other household workers were asked to stay behind to fight fires, guard homes or pets, work in smoky conditions, and clean up toxic ash. Workers were further put at risk when employers failed to tell them that the homes they work in were under mandatory evacuation. The growing frequency and intensity of wildfires, flooding, and other extreme weather events make it imperative that legislators take immediate legislative action to protect the health and safety of these workers."

5. Opponent Arguments:

None received

6. Staff Comments:

Enforcing all existing occupational safety and health requirements on a domestic worker employer, a private household, presents challenges. The Legislature and the Governor recognized these challenges when signing SB 321 directing Cal/OSHA to convene the Advisory Committee to study the issue and develop *voluntary industry-specific* occupational safety and health guidance to educate employees and employers in the industry. Those guidelines are out and available for employers to use **on a voluntary basis**. This bill proposes to apply all existing OSHA requirements to this previously unregulated industry.

Using the voluntary guidelines as a starting point for Cal/OSHA to consider as they develop formal guidelines for what will be a new mandatorily regulated industry makes sense. As these conversations continue, committee staff offers the following for consideration:

As the Advisory Committee notes in their report on recommendations to the Legislature, "It is important also to consider privacy and safety concerns related to health, medical records or disability, *as well as immigration status*, and to obtain feedback from employers in protected classes, such as people with disabilities." *If we are bringing domestic worker employers into compliance with occupational safety and health laws, how do we also educate these household employers on other responsibilities they may be liable for? For example, ensuring they are aware of their duties involving the legal hiring of individuals, classifying workers as employees and independent contractors correctly, payment of payroll taxes for purposes of Unemployment Insurance, and securing workers' compensation insurance for their workers? How do we find a balance so as to not further send this industry into the underground economy?*

The Advisory Committee report also notes, "Employers should have the opportunity to become educated and reach compliance before intervention or citation by Cal/OSHA." The provisions of this bill do not address how these new employers will be penalized for occupational safety and health law violations. The report notes the need to implement an industry-specific system for investigation and enforcement including a tiered system of warnings with the opportunity to correct hazards. The Advisory Committee also noted that

Cal/OSHA should maintain the existing penalty structure, which they argue, acts as a deterrent to violations. However, the report also included the view of one employer representative who disagreed with this recommendation, "**stating that the diversity of domestic employers should be recognized (given the widely varying income levels and a mix of agencies and individuals)** and that there needed to be a penalty structure more appropriate for this population, with consideration of low-income attendant employers." *Should domestic household employers be liable under the same penalty scheme as other more established employers? Should a homeowner be cited and imposed a penalty for OSHA violations under the same amount as a storefront, grocery store or restaurant?*

7. Prior Legislation:

SB 321 (Durazo, Chapter 332, Statutes of 2021) requires the Division of Occupational Safety and Health (Cal/OSHA) to convene an advisory committee to provide voluntary guidance and make recommendations on policies the state may adopt to protect the health and safety of privately funded household domestic service employees. This bill also requires Cal/OSHA to release and publicly post a report of the advisory committee on its internet website and submit a copy to the Legislature by January 1, 2023.

SB 1257 (Durazo, 2020), as enrolled, was identical to SB 321 as it left the Senate except implementation dates, which were a year earlier in SB 1257 and the exemption of family daycares. SB 1257 was vetoed by the Governor.

AB 2658 (Burke, Chapter 288, Statutes of 2020) made it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the public health or safety. The bill defined "employee" for this purpose to include a person receiving employment for household domestic service.

SB 83 (Committee on Budget and Fiscal Review, Chapter 24, Statutes of 2019), among other things, established the domestic worker outreach and education program within DLSE to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards in this industry

SB 1015 (Leyva, Chapter 315, Statutes of 2016) deleted the January 1, 2017 repeal date for the provisions under the Domestic Worker Bill of Rights, thereby making the requirement permanent.

AB 241 (Ammiano, Chapter 374, Statutes of 2013) enacted the Domestic Worker Bill of Rights to regulate the hours of work of certain domestic work employees and provide an overtime compensation rate for those employees, with a January 1, 2017 sunset date.

SUPPORT

California Domestic Workers Coalition (Co-Sponsor)
California Employment Lawyers Association (Co-Sponsor)
California Immigrant Policy Center (Co-Sponsor)
Equal Rights Advocates (Co-Sponsor)
Worksafe (Co-Sponsor)

AAPIs for Civic Empowerment Education Fund
Asian Pacific Environmental Network (APEN)
Bay Rising
Berkeley Labor and Occupational Health Program
Black Women for Wellness
Breast Cancer Prevention Partners
California Commission on Aging
California Legislative Women's Caucus
California Rural Legal Assistance Foundation (CRLA Foundation)
Caminante Cultural Foundation
Caring Across Generations
Catalyst Project
Change Californians for A Healthy and Green Economy
Chinese for Affirmative Action
Chinese Progressive Association
Clean Carwash Worker Center
Coalition for Humane Immigrant Rights (CHIRLA)
Day Worker Center of Mountain View
Disability Rights California
Dolores Street Community Services
El Centro Cultural De Mexico, Santa Ana
El/la Para Trans Latinas
Filipino Advocates for Justice
Filipino Community Center
Filipino Migrant Center
First Mennonite Church of San Francisco
Gabriela Oakland
Grace End Child Poverty Institute
Grace Institute - End Child Poverty in Ca
Hand in Hand
Hand in Hand: the Domestic Employers Network
Institute of Popular Education of Southern California (IDEPSCA)
Instituto De Educacion Popular Del Sur De California (IDEPSCA)
Motivating Our Students Through Experience
Mujeres Unidas Y Activas
National Employment Law Project
National Domestic Workers Alliance
Or Shalom Jewish Community
Physicians for Social Responsibility - Los Angeles
Pilipino Association for Workers and Immigrants - South Bay
Pilipino Workers Center
Pomona Economic Opportunity Center
Raizes Collective
San Francisco Living Wage Coalition
SEIU California
Senior Disability Action
Showing Up for Racial Justice (SURJ) Bay Area
Southern California Coalition for Occupational Safety and Health (SOCALCOSH)
The Restaurant Opportunities Center of Los Angeles
Trabajadores Unidos Workers United

UCLA Labor Occupational Safety & Health Program
US Academy for Training and Job Placement for Immigrant Community Services Center
Vision Y Compromiso
Warehouse Worker Resource Center
Women's Voices for The Earth
Working Partnerships USA
Individual Support letters: 34

OPPOSITION

None received

-- END --

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

Bill No:	SB 723	**Hearing Date:**	April 26, 2023
Author:	Durazo		
Version:	March 20, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: rehiring and retention: displaced workers

KEY ISSUES

Should existing provisions requiring hotels, private clubs, event centers, airport or office hospitality operations and airport service providers to recall (re-hire) workers who were previously laid-off due to COVID-19 be made permanent?

Should the new permanent provisions apply to all workers laid off as a result of a public health directive, government shutdown order, lack of business, reduction in force, or other economic nondisciplinary reason?

ANALYSIS

Existing law:

1) Requires certain hospitality and service industry employers to offer to rehire qualified former employees who were laid off due to the COVID-19 pandemic. Among other things, the "Right to Recall" provisions:
   a. Requires employers to notify covered employees of specified enterprises of job openings for the same or similar positions as the ones they last held.
   b. Covered workers include employees at *hotel or private clubs with 50 or more guest rooms, airports, airport service providers and event centers.*
   c. Within five business days of establishing a position, an employer shall offer its laid-off employees in writing, either by hand or their last known physical address, any by email and text message (to the extent the employer possesses this information) all job positions that become available, with priority based on length of service, before new employees can be hired.
   d. Qualified laid-off employees must respond to notices within five days.
   e. Prohibits employers from refusing to employ, terminate, reduce in compensation, or otherwise take any adverse action against any laid-off employee for seeking to enforce these rights.
   f. Directs the Division of Labor Standards Enforcement to enforce these provisions and authorizes a laid off employee to file a complaint with DLSE for violations and entitles them to hiring and reinstatement rights, front and back pay, as specified, and the value of benefits the employee would have received under the employer's benefit plan.
   g. Subject employers guilty of a violation to specified civil penalties and employees will be entitled to damages of $500 per day of violation and will be awarded damages for each day of violation until cured.

h. These recall rights are effective April 16, 2021 **through December 31, 2024**. (Labor Code §2810.8)

2) Under the Displaced Janitor Opportunity Act, regarding contracts to provide janitorial or building maintenance services, requires:
   a. A terminated contractor to provide to the successor contractor, the name, date of hire, and job classification of each employee employed at the terminated site(s) covered.
   b. A successor contractor or subcontractor to retain, for a 60-day transition employment period, employees of the terminated contractor and subcontractor, as specified.
   c. The successor to make a written offer of employment to each employee, as specified.
   d. If at any time the successor determines that fewer employees are needed, the successor contractor or subcontractor shall retain employees by seniority. (Labor Code §1060-1065)

3) Regarding grocery establishments, when a change in control (such as a sale or transfer) occurs, requires:
   a. An incumbent grocery employer to provide the successor grocery employer the name, address, date of hire, and occupation classification of each eligible grocery worker.
   b. The successor grocery employer to maintain a preferential hiring list of eligible workers identified and hire from that list for a period of 90 days, as specified.
   c. During this 90-day transition period, eligible workers to be employed under the terms and conditions established by the successor and pursuant to any relevant CBA, if any.
   d. If the successor employer determines that it requires fewer workers, the successor grocery employer shall retain eligible grocery workers by seniority, as specified.
   e. If the eligible worker's performance during the 90-day transition employment period is satisfactory, the successor employer to consider offering continued employment. (Labor Code §2500-2522)

4) Regarding public transit service contracts and contracts for the collection and transportation of solid waste, requires:
   a. A bidder to declare as part of the bid whether or not they will retain employees of the prior contractor/subcontractor for a 90-day transition period if awarded the contract.
   b. An awarding authority to give a 10-percent bid preference to any bidder who agrees to retain the employees of the prior contractor, per the above.
   c. If, at any time, the successor contractor/subcontractor determines that fewer employees are required, the successor contractor/subcontractor must retain employees by seniority within the job classification, as specified. (Labor Code §1070-1076)

5) Establishes within the Department of Industrial Relations (DIR) and under the direction of the Labor Commissioner, the Division of Labor Standards Enforcement (DLSE) tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)

This bill:

1) Revises the provisions of the existing COVID-19 Recall Rights for hotels, private clubs, event centers, airport hospitality operations, airport service providers or other provision of building service to office, retail or commercial buildings to:

a. Delete references to the COVID-19 state of emergency.
b. Delete the December 31, 2024 sunset date on the provisions, thereby making these recall requirements permanent.
c. Revise the definition of "laid-off employee" to mean any employee who was employed by the employer for 6 months or more and whose most recent separation from active employment by the employer occurred on or after March 4, 2020, and was a result of a public health directive, government shutdown order, lack of business, reduction in force, or other economic nondisciplinary reason.

COMMENTS

1. Background: Adoption of COVID-19 Recall Rights

The COVID-19 pandemic and the shutdown orders to mitigate the spread of the virus lead to a dramatic loss of jobs and an 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 on which they relied to pay for essentials such as housing and food. By April 2020, the unemployment rate had surpassed previous peaks observed during the Great Recession.

In August 2020, a bill (AB 3216 Kalra) was introduced to attempt to address what was happening on the ground to the workers in the hospitality industry. The bill required hospitality and airport employers to offer its laid-off employees specified information about job positions that become available for which the laid-off employees are qualified, and to offer positions to those laid-off employees based on a preference system, in accordance with specified timelines and procedures. The bill would also require an incumbent employer, within 15 days after the execution of a transfer document, to provide to the successor employer specified information pertaining to eligible employees and would require the successor employer to maintain and hire from a preferential hiring list for a specified time period. AB 3216 was vetoed by the Governor (veto message below under prior legislation).

In 2021, the Legislature approved and the Governor signed SB 93 (Chapter 16, Statutes of 2021) which provides recall/rehiring rights to employees working in the hospitality industry – including for hotels, event centers, and airport service and hospitality providers – who were laid-off due to a non-disciplinary reason related to the COVID-19 pandemic, including lack of business, a government shut-down order, or public health directive. The bill did not include the successor employer rehire requirements that AB 3216 included. These rehiring rights are set to end on December 31, 2024.

As an example of the impact the law has had for employees of one company, in July 2022, the California Labor Commissioner recovered and paid $1.52 million to 57 workers at Terranea Resort in Rancho Palos Verdes who were laid off during the COVID-19 pandemic. Some workers were not timely offered jobs, while others did not receive any job offers once the resort re-opened, as required by the Right to Recall law. Workers compensated for having their labor rights violated include banquet housepersons, banquet servers, banquet captains, banquet bartenders, and junior sous chefs. The $1.52 million payment came from a settlement reached with Terranea Resort after it was cited for $3.3 million in March 2022 for failing to comply with the law after the resort re-opened for business in 2021. In addition to issuance of the citation for liquidated damages payable to the employees and civil penalties

payable to the State, a Notice to Discontinue Labor Violations was issued directing Terranea to offer positions to employees who should have been returned to work, but still have not had that opportunity.

2. Similar Efforts through Ordinances:

Several local ordinances have been adopted over the last couple of years to tackle the issue of worker recall and retention in response to the unemployment crisis created by the pandemic. Below is a sample of a couple of city ordinances adopted for these purposes.

City of Santa Monica
Adopted in December 2001, the City of Santa Monica appears to be the first city to adopt a right of recall ordinance. Adopted in response to an economic downturn that was worsened by the 9/11 terrorist attacks, the ordinance applies to employers doing business at a location in the Coastal Zone or Extended Downtown Core with gross receipts over five million dollars in the year 2000 for that location. The ordinance requires employers to offer in writing, to the last known address of laid off employees, all positions which are or become available for which the laid off employees are qualified, as specified. Where more than one employee is entitled to preference for a position, the employer is required to offer the position to the employee with the greatest length of service with the employer. A laid off employee offered a position has ten days in which to accept or decline the offer.

City and County of Los Angeles
On April 29, 2020, the City of Los Angeles adopted two ordinances to provide recall and retention protections to workers in certain industries deemed severely impacted by the COVID-19 pandemic and the stay-at-home orders in the state. The COVID-19 Right of Recall Ordinance #1866602 and the COVID-19 Worker Retention Ordinance #186603 became effective June 14, 2020, but cover workers laid off on or after March 4, 2020. The City of Los Angeles ordinances are aimed at airports, commercial properties employing janitorial, maintenance or security service workers, event centers and hotels.

Los Angeles County followed suit, and on May 12, 2020, adopted two similar ordinances for their jurisdiction. The ordinances provide legal protections for workers when the specified businesses change ownership or control. Los Angeles County's ordinances (COVID-19 Right of Retention Ordinance #2020-0031 and COVID-19 Right of Recall Ordinance #2020-0030) establish protections for janitorial, maintenance, and security service workers on commercial properties, and hospitality workers in the unincorporated areas of Los Angeles County.

For both the city and county of LA ordinances, employees are allowed to bring a private right of action in state court for violations, however, employees must first give employers notice of the alleged violation and 15 days from receipt of the notice to cure the violations.

City of Long Beach
Following the efforts started in Los Angeles, the City of Long Beach adopted similar worker recall and retention ordinances on May 19, 2020. The COVID-19 Worker Retention Ordinance #20-0016 and the COVID-19 Worker Recall Ordinance #20-015 are both aimed at providing legal protections to workers and became effective June 22, 2020. Similar to the LA ordinances, the Long Beach ordinances cover specific industries including commercial property employers that provide janitorial services and hotel employers that employ at least 25 employees.

Similar to LA, in the City of Long Beach, an employee can bring a private right of action in state court for violations but again, must first provide employers with a notice of the alleged violation and 15 days to cure before proceeding to court.

3. Need for this bill?

According to the author, "At the start of the COVID-19 pandemic, low-income workers in the hospitality industry, primarily immigrants and women of color, were laid off and anxiously waited to see if they could get their jobs back. These workers had no source of income or security and after many decades on the job, many older workers feared that employers would only rehire younger, newer workers at lower pay rates.

Most of the job losses were among hotel housekeepers, mostly women of color over age 50. These women have the lowest statistical possibility of even being interviewed for a new job. Research has shown us that following economic recessions, women over 50 are affected the most in their experience of long-term unemployment. Jobless women are 18 percent less likely to find new work at age 50 to 61 than at age 25 to 34. At 62 or older, they are 50 percent less likely to be rehired, according to the Urban Institute.

Though the COVID-19 pandemic has abated somewhat, employers layoff workers for many non-disciplinary reasons including any slow-down in the tourism industry, economic downturns, another public health emergency, or even repairs. Mergers of companies may also result in temporary layoffs as the new owner assesses the business. In addition, the hospitality industry is particularly sensitive to economic downturns since business and leisure travel is often the first expense cut. If the existing rehiring rights expire in 2024, many of these hospitality workers will be left again with uncertainty if they are laid off through no fault of their own. Making these provisions permanent prepares the industry for any future disruptions and lays the foundation for a swift recovery."

4. Proponent Arguments:

According to the sponsors, the California Labor Federation, "Nearly 40 percent of all California jobs lost during the pandemic were in the hospitality industry. Millions of workers – low-wage, immigrant, female – were left with no source of income or security. After years of working their way up at one employer, workers feared they would have to start again at the bottom rung, losing years of seniority, pay raises, and paid time off. Mass layoffs gave employers the opportunity to rehire newer, younger workers into jobs that older workers previously held."

Proponents argue that, "Rehire rights also benefit employers and the economy. Evidence from past recessions shows that keeping workers connected to their jobs during downturns speeds economic recovery. This was the logic behind the federal Paycheck Protection Program that was intended to help businesses keep their workers on payroll until they could be recalled to work. Employers avoid the costly and time-intensive hiring and training process and can quickly return to full productivity. Workers avoid long-term unemployment and wage loss speeding recovery after economic shocks.

The right to rehire law sunsets December 31, 2024, leaving many workers without protection when they are laid off because of non-disciplinary reasons. Though the COVID-19 pandemic has abated somewhat, the hospitality industry remains vulnerable to future crises and economic

fluctuations. The hospitality industry is particularly sensitive to economic downturns since business and leisure travel is often the first expense cut."

5. Opponent Arguments:

A coalition of employer organizations, including the California Chamber of Commerce, argue that SB 723 undoes legislative compromise that became SB 93 (2021). They write, "In the beginning of the COVID-19 pandemic, AB 3216 (Kalra) (2020) proposed a right to recall for hospitality workers during any state of emergency. It was vetoed due to the burden it would have placed on struggling industries and its failure to narrowly tailor its provisions to COVID-19. As part of the budget process the following year, negotiations took place between the Legislature, administration, and business community regarding a narrower version of a right to recall. Although it still faced opposition as being unnecessary and overly burdensome, the result, SB 93, was more limited in time and scope and specifically tied to the unique circumstances presented by the COVID-19 pandemic. It had a sunset date of December 31, 2024. Now, even before that sunset date, SB 723 dismantles those negotiations by instituting a permanent right to recall for the hospitality workers covered under SB 93."

Additionally, they argue, the bill "seeks to forever micromanage the rehire process for affected businesses. As demonstrated by the impacts of SB 93 and several similar local ordinances, SB 723's provisions, or lack thereof, will only delay rehiring and increase costs on employers." Specifically, they argue, among other things, that SB 723:

- Slows down the hiring process by forcing employers to repeatedly offer newly available positions to qualified employees, no matter how many times they have turned offers down, failed to respond, or explicitly declined previous work offers.
- Essentially eliminates the use of severance agreements, which benefit employees. No employer subject to such a retention right would have any reason to offer severance.
- Forces employers to hire based on seniority, not skill.
- Exposes employers to administrative costs as any good faith error results in penalties.

Furthermore, they argue that the bill is unnecessary as any of the businesses targeted are presently struggling to hire. They write, "Hotels estimate their vacancy rates at about 20%. It is common sense and smart business practice to rehire known, trained, and former employees who previously had to be laid off due to economics or a required shutdown. SB 723 simply adds to the difficulty of hiring and running a business, it does nothing to help these businesses."

Additionally, they argue that unlike SB 93 or similar ordinances, "SB 723 is not the result of a unique obstacle such as the pandemic. Nor is it limited in time – it is a permanent statutory scheme that eliminates at-will employment and mandates hiring based on seniority alone. For this reason, SB 723 likely violates the Contracts Clauses of the United States and California constitution because it modifies existing at-will contracts."

In conclusion, they argue that "the hospitality industry is still vulnerable to the impacts of COVID-19 and the vagaries of the economy. In addition to the significant loss of revenues over the last few years, that industry is also contending with the rising cost of goods, rising costs of rent and new construction, decrease in business travel upon which the industry depends, and worker shortages. SB 723 would put an unnecessary, undue burden on the industry at a time when it is fighting to return to where it was pre-pandemic."

Additional opposition, from the California Hotel & Lodging Association, notes the complexities and time delays SB 93 has caused and writes, "while simultaneous offers can be submitted, the required five-day waiting period means that if one employee who has higher seniority does not respond (this happens often when the former employee has changed careers or moved), the hotel must wait the full five days before a lower-seniority employee who is eager to resume employment (some may be under time pressures to resume employment as quickly as possible) may be hired for the position. Again, on a singular basis, this may not seem to be a deleterious challenge to the employer, however, when a hotel is attempting to restart a range of operations and rehire employees for a multitude of positions which are reliant upon one another to operate the hotel, these delays add up to create timing difficulties, increase costs, and render it unnecessarily difficult to get people re-employed."

6. Prior and Related Legislation:

SB 627 (Smallwood-Cuevas, 2023) would, among other things, require an employer, for one year after the closure of a covered establishment, to provide to all covered workers the opportunity to remain employed by the employer and to transfer to a location of the chain within 25 miles of the covered establishment subject to closure as positions become available. SB 627 applies to a business in California consisting of 100 or more chain establishments nationally that share a common brand and are owned and operated by the same parent company. SB 627 was previously heard and passed by this Committee and is pending before the Senate Judiciary Committee.

SB 725 (Smallwood-Cuevas, 2023) would require, among other things, a successor grocery employer to provide an eligible grocery employee severance pay equal to one week of pay for each full year of employment with the incumbent employer if the successor grocery employer does not hire an eligible grocery worker following a change in control or does not retain an eligible grocery worker for at least 90 days, as specified. SB 725 was previously heard and passed by this Committee and is pending on the Senate Floor.

AB 1356 (Haney, 2023) would, among other things, make changes to the California WARN Act provisions to increase the notice requirement from 60 to 90 days prior to a mass layoff and would revise the definition of "covered establishment." Pending in Assembly Judiciary Committee.

SB 93 (Committee on Budget and Fiscal Review. Chapter 16, Statutes of 2021) was a trailer bill that made various statutory changes to implement rehiring rights for hospitality, airports, airport service providers and event center rehiring rights for workers who were laid off for reasons related to the COVID-19 pandemic with a December 31, 2024 sunset date.

SB 3216 (Kalra, 2020, Vetoed) would have required employers that operate a hotel, private club, event center, airport hospitality operation, airport service provider, janitorial service, building maintenance or security service to recall employees previously laid-off, as specified. The bill also would have required these successor employers to maintain a preferential hiring list of eligible employees identified by the incumbent employer and hire from that list for a period of six months after the change of control and to retain those employees for a 90-day transition employment period, and offer continued employment, as specified. In his veto message, Governor Newsom stated:

. . . . I recognize the real problem this bill is trying to fix-to ensure that workers who have been laid off due to the COVID19 pandemic have certainty about their rehiring and job security. But, as drafted, its prescriptive provisions would take effect during any state of emergency for all layoffs, including those that may be unrelated to such emergency. Tying the bill's provisions to a state of emergency will create a confusing patchwork of requirements in different counties at different times. The bill also risks the sharing of too much personal information of hired employees. There must be more reasonable tools to effectively enforce the recall provisions. Finally, the hospitality industry and its employees have been hit hard by the economic impacts of the pandemic. I believe the requirements of this bill place too onerous a burden on employers navigating these tough challenges, and I would encourage the legislature to consider other approaches to ensure workers are not left behind.

AB 1669 (Hernandez), Chapter 874, Statutes of 2016, extended an existing bid preference for public transit contractors who agree to retain employees to also include contracts for the collection and transportation of solid waste**,** as specified.

AB 359 (Gonzalez), Chapter 212, Statutes of 2015, established the 90-day worker retention requirements upon a change in control of a grocery establishments.

SUPPORT

California Labor Federation, AFL-CIO (Sponsor)
California Immigrant Policy Center

OPPOSITION

Brea Chamber of Commerce
California Attractions and Parks Association
California Business Properties Association
California Chamber of Commerce
California Hotel & Lodging Association
California Restaurant Association
California Retailers Association
California State Council of The Society for Human Resource Management (CALSHRM)
California Travel Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Coalition of California Chambers – Orange County
Corona Chamber of Commerce
Danville Area Chamber of Commerce
Fontana Chamber of Commerce
Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Conejo Valley Chamber of Commerce

Greater High Desert Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
LA Canada Flintridge Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
South County Chambers of Commerce
Templeton Chamber of Commerce
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce
Vacaville Chamber of Commerce
Vista Chamber of Commerce
Yorba Linda Chamber of Commerce

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

Bill No:	SB 276	**Hearing Date:**	April 26, 2023
Author:	Seyarto		
Version:	February 1, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Workweek: overtime: legislative employees

KEY ISSUE

Should the state apply existing Labor Code law regulating overtime compensation to an individual currently employed by the Legislature?

ANALYSIS

Existing federal law:

1) Prohibits, as specified, an employer from employing an employee for a workweek longer than forty hours unless such employee receives compensation at a rate not less than one and one-half times the employee's regular rate. (Fair Labor Standards Act (FSLA), 29 USC 207 (a))

2) Exempts from the FLSA definition of "employee" an individual employed by a State, political subdivision of a State, or an interstate governmental agency *who is not subject to the civil service laws (see Existing state law, paragraph 1, infra)* of the State, political subdivision, or agency which employs him; and is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency. (FSLA, 29 USC 203 (e)(2)(C)(V))

3) Authorizes covered employees of a public agency which is a State, political subdivision of a State, or an interstate governmental agency to receive in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour, as specified. (FSLA, 29 USC 203 (o)

Existing state law:

1) Exempts officers and employees appointed or employed by the Legislature, either House, or legislative employees from the civil service. (Cal. Const. art. VII, § 4)

2) Does not apply Labor Code provisions to public sector employers unless specifically provided for in the respective statute. (*Johnson v. Arvin-Edison Water Storage Dist.*, 174 Cal.App.4th 729)

3) Authorizes the Industrial Welfare Commission (IWC) to establish exemptions from the Labor Code's overtime compensation requirements, as specified, and exempts employees

directly employed by the State, as specified, from provisions of the Industrial Welfare Commission's Work Order No. 4 regulating overtime compensation. (LC § 515; IWC Order No. 4-2001, § 1 (B))

4) Requires an employer to compensate an employee at the rate of no less than one and one-half times the regular rate of pay for an employee for any work in excess of:

    a. Eight hours in one workday;
    b. Forty hours in any one workweek;
    c. The first eight hours worked on the seventh day of work in any one workweek

    (Labor Code (LC) § 510)

5) Requires an employer to compensate an employee at the rate of no less than twice the regular rate of pay of an employee for any work in excess of:

    a. Twelve hours in one day at the rate of no less than twice the regular rate of pay for an employee;
    b. Eight hours on any seventh day of a workweek. (LC § 510)

6) Does not apply overtime compensation to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage. (LC § 514)

7) Provides collective bargaining for executive branch state employees under the Ralph C. Dills Act which establishes a process for determining wages, hours and terms and conditions of employment for represented employees but generally excludes managers and confidential employees from bargaining rights. (Government Code (GC) § 3512 et seq.)

This bill:

1) Explicitly applies existing Labor Code law regulating overtime to an individual currently employed by either house of the Legislature.

2) Does not apply existing Law Code law regulating overtime to a Member of the Legislature.

3) Declares that the bill does not create a state mandated reimbursable mandate on a local agency or school district because it creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

COMMENTS

1. Background

Legislative employees, as they are not members of the state civil service, fall under the federal law's exclusion from the FSLA's definition of "employee", as specified. Thus, federal overtime laws do not apply to legislative employees.

Although the FLSA does cover state executive branch civil service employees, its overtime compensation provisions do not apply to employees covered under a collective bargaining agreement, as specified. Most state civil service employees have collective bargaining agreements with the state pursuant to the Dills Act. Thus, state MOUs generally govern overtime compensation for state represented employees.

Additionally, the FLSA authorizes a state employer to provide compensating time off in lieu of overtime compensation for FSLA covered employees. Government Code, CalHR or departmental policy govern non-represented employees and discourage overtime but where necessary, generally provide compensated time off for non-represented employees.

State case law holds that Labor Code provisions do not apply to public sector employers unless the statute at issue specifically applies by reference to public employees. Since LC §510 regulating overtime compensation makes no applicable reference to public employers, its overtime provisions do not apply to state employees, including legislative employees. This bill would apply the LC § 510 specifically to Legislative employees.

Although state employees overtime issues are addressed though other statutes as described above, the author may wish to consider specifically applying LC § 510 to executive branch employees, subject to collective bargaining, to provide parity between legislative and executive branch state employees. Furthermore, the committee notes that the bill could specifically authorize the legislature and the executive branch to provide compensating time off in lieu of overtime compensation similar to the relevant FSLA provision which helps public agencies accommodate budget challenges and stabilize overtime costs by spreading overtime compensation over longer periods.

2. Need for this bill?

According to the author,

"The legislature has had a well-documented history of inequitable and unhealthy work environments for legislative staff. Many of these experiences have been brought to light in recent years and the #MeTOO movement prompted reforms to the way the legislature addresses harassment, discrimination and abuse. In 2019, the legislature took a significant step in addressing internal abuse by establishing the Workplace Conduct Unit (WCU).

"However, there still exists statutory inequities that the WCU does not have the authority to address. Campbell v Regents of University of California (2005) established judicial precedence that most labor laws do not apply to public sector employees unless explicitly clarified in statute. Consequently, certain abuses relating to working hours and compensation are still legally permitted and may be used for implicitly discriminatory or retaliatory purposes."

3. Proponent Arguments

According to the author,

"This bill would ensure that legislative employees are entitled to the same overtime working hour protections that the legislature has already mandated for all other workers across the state."

4. Opponent Arguments:

None received.

5. Related/ Prior Legislation:

AB 1 (McKinnor, 2023) would authorize collective bargaining for legislative employees. The bill is currently awaiting a hearing in the Assembly Public Employment and Retirement Committee.

SB 550 (Dahle, 2021) would have required that existing law that governs employment practices of private employers also apply to the Legislature. The Senate Appropriations Committee held the bill on its suspense file.

AB 1577 (Gonzalez, 2022) would have allowed legislative employees to engage in collective bargaining. The bill failed passage on concurrence in the Assembly Public Employment and Retirement Committee.

SUPPORT

None received

OPPOSITION

None received

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

Bill No:	SB 300	**Hearing Date:**	April 26, 2023
Author:	Seyarto		
Version:	February 2, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement: fiscal impact: information

KEY ISSUE

Should the state require legislative bills relating to PERS and referred to the Senate Labor, Public Employment and Retirement Committee (SLPER) to include a fiscal analysis by the Legislative Analyst's Office (LAO)?

ANALYSIS

Existing law:

1) Establishes the California Public Employees' Retirement System (CalPERS), which provides a defined benefit pension to state employees, classified school employees, and employees of contracting public agencies. (Government Code (GC) § 20000 et seq.)

2) Establishes the Joint Legislative Budget Committee to ascertain facts and make recommendations to the Legislature and to the houses thereof concerning the State Budget, the revenues and expenditures of the State, the organization and functions of the State, its departments, subdivisions and agencies, and such other matters as may be provided for in the Joint Rules of the Senate and Assembly. (GC § 9140)

3) Authorizes the appointment of a legislative analyst and such other clerical and technical employees, as specified, and deems the statutory term "Legislative Auditor" to mean the Legislative Analyst (LAO). (GC § 9143)

4) Requires the LAO to prepare a judicial impact analysis, with the assistance of the Department of Finance and the Judicial Council when and as requested by the LAO, on selected measures referred to the Senate Judiciary Committee, Senate Criminal Procedure Committee, Assembly Judiciary Committee, and Assembly Committee on Public Safety. (GC § 9144)

5) Requires the LAO to select for analysis, as resources permit with no additional staff, those measures with the greatest apparent potential impact on court manpower and costs. Allows the LAO to analyze other measures as staff resources permit and requires the LAO to give its analysis of a measure to the respective committee members prior to the date on which the committee schedules to hear the measure. Requires the LAO to perform the specified analyses on a nine-month trial basis. Thereafter, the three respective committees shall evaluate the cost and effectiveness of this type of analysis for the specified policy committees. (GC § 9144)

6) Establishes within the State Controller's Office, the California Actuarial Advisory Panel (CAAP) to provide impartial and independent information on pensions, other postemployment benefits, and best practices to public agencies and report thereon to the Legislature annually. (GC § 7507.2 et seq.)

7) Requests the University of California (UC) to establish the California Health Benefits Review Program (CHBRP) to assess, as specified and not later than 60 days from receiving a request by the Legislature, legislation proposing to mandate or repeal a health plan or health insurance benefit or service for public health, medical, and financial impacts. (Health and Safety Code (HSC) §127660)

8) Requires any bill that would authorize a new tax expenditure or that would authorize an exemption from the taxes, as specified, to contain: (1) Specific goals, purposes, and objectives that the tax expenditure will achieve; (2) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the bill; and (3) data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives. The requirements shall include the specific data and baseline measurements to be collected and remitted in each year the tax expenditure is in effect, in order for the Legislature to measure the change in performance indicators, and the specific taxpayers, state agencies, or other entities required to collect and remit data. (Revenue and Tax Code (RTC) § 41)

This bill:

1) Requires any bill, introduced on or after January 1, 2024, that the Senate Rules Committee refers to the Senate Labor, Public Employment and Retirement Committee that relates to PERS to include a fiscal impact analysis from the Legislative Analyst's Office.

2) Requires LAO's analysis to describe the bill's fiscal impact on PERS and the bill's outcome if implemented.

COMMENTS

1. Background

In the simplest of terms, the state sponsors a defined benefit retirement plan for its employees, classified school employees, and for the employees of local agencies that contract to participate in the plan. The plan, administered by the Board of Administration of the California Public Employees' Retirement Systems (CalPERS, also sometimes known as PERS), requires public employers and their employees (also known as members) to make pension contributions to the Public Employees' Retirement Fund (PERF), which CalPERS then invests. CalPERS uses the proceeds from the investments to fund members' pension benefits upon retirement. CalPERS performs actuarial valuations to determine the PERF's asset value and the plan's cumulative liabilities (i.e., the present value of future benefits payable to members) in order to establish an annual pension contribution rate that employers and employees must pay annually to the PERF. Constitutional, statutory, and case law establish and protect CalPERS' authority to establish and impose the contribution rates.

Members, upon retirement, receive a defined benefit pension allowance determined by specified factors related to their years of service, final compensation, and a percentage factor applied to their final compensation. They do not receive the simple balance of their contributions grown (or reduced) by their individual account's investment performance (i.e., this is not like a 401K plan). Any risk that the PERF's investment performance is insufficient to fund retirees' pension benefits falls directly on CalPERS covered employers and their active employees.

Substantial cyclical macroeconomic transitions in the economy can render previous actuarial assumptions irrelevant if they materially affect the PERF's asset and liability valuations and/ or CalPERS' investment return assumptions and can result in significant increased pressures on the General Fund.

Bills that affect CalPERS' financial condition, either by increasing pension benefits for current retirees or members near retirement or by restricting CalPERS' investment authority create particular challenges when unforeseen economic conditions destabilize the PERF's actuarial underpinnings.

Committee Comments

By using the term "PERS", the bill does not clearly define what entity or subject matter it covers. That term can mean CalPERS but it can also mean the subject of "Public Employment and Retirement Systems", particularly in the context of the legislative committees' jurisdiction. The latter terminology is far broader and includes, among other matters, the entire collective bargaining structure in public sector labor relations.

Additionally, PERS can refer generally to all "Public Employment Retirement Systems". There are, for example, separate public retirement systems for teachers (the California State Teachers' Retirement System (CalSTRS); for employees of counties that do not contract with CalPERS but instead have their own public retirement system pursuant to the County Employees' Retirement Law of 1937 (CERL); employees of the University of California (UCRS); and employees of charter cities that have established their own independent retirement system through their city charter (e.g., the San Francisco Employees' Retirement System (SFERS) or the Los Angeles City Employees' Retirement System (LACERS).

As currently drafted, the committee understands that the bill would apply only to bills affecting the California Public Employees' Retirement System and not systems that provide retirement benefits for public teachers or public employees covered under other public retirement systems.

2. Need for this bill?

According to the author:

"Currently, in both the California Senate and Assembly, committees have implemented rules for legislation submitted to the committee in order for it to be taken up for consideration – from impact of timetable and analysis in the Senate Health Committee to data analysis of past and purported tax revenue in the Assembly Revenue and Tax Committee, however, there are no such provisions in the Senate Labor, Public Employment and Retirement Committee. This bill seeks to remedy the lack of provisions for bills, as it relates specifically to CalPERS,

to be heard in the Senate Labor, Public Employment and Retirement Committee by providing clear, objective, non-partisan analysis for committee members."

3. Proponent Arguments

According to the California Chamber of Commerce, although the legislature generally considers fiscal impacts of legislation in its fiscal committees, "…PERS presents a unique circumstance where the fiscal and the policy [impacts] are closely intertwined. As a result, we believe policymakers should have as much information about the impacts of their policy decisions in PERS committees as possible."

"SB 300 would help address that problem by providing policymakers with additional information from the Legislative Analyst's Office on the economic consequences of their decisions regarding employee pensions. This information is particularly critical as we face economic uncertainty and the potential for a recession in the coming years – which will challenge pension funds' ability to meet their expected rates of return."

4. Opponent Arguments:

According to the California Federation of Teachers:

"CFT believes that redundancy of resources by the Legislature should be avoided. The fiscal committees in both Houses already provide a thorough analysis of the fiscal impact a bill will have; an additional analysis by the Legislative Analysis (sic) Office is unnecessary."

5. Dual Referral:

Although the Legislative Counsel has not designated the bill to have either an appropriation or a fiscal impact, the Senate Rules Committee has referred this bill to SLPER and to the Senate Appropriations Committee.

6. Prior Legislation:

SB 783 (Pan, 2018) would have requested the University of California (UC) establish the Pension Divestment Review Program (PDRP) to assess proposals that require a public employee pension fund to divest assets, or restrict the fund from investing, based on specific criteria or by reference to an external benchmark. The Assembly Appropriations Committee held the bill on its suspense file.

SB 32 (Moorlach, 2017) would have among other things creates the Citizens' Pension Oversight Committee (OC) consisting of 5 to 9 members jointly appointed by CalPERS and CalSTRS from persons with experience in fiduciary matters who do not receive benefits from the two systems to serve in an advisory role to CalPERS and CalSTRS.

SUPPORT

California Chamber of Commerce

OPPOSITION

California Federation of Teachers
California Teachers Association

-- END --

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

Bill No:	SB 322	**Hearing Date:**	April 26, 2023
Author:	Becker		
Version:	April 18th, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Zero-Emission Vehicle Battery Manufacturing Block Grants Program

KEY ISSUE

Should the Legislature establish labor preferences that the California Energy Commission (CEC) and a third-party administrator must use when awarding funds for the Zero-Emission Vehicle (ZEV) Battery Manufacturing Block Grants Program?

ANALYSIS

Existing law:

1) Establishes the Clean Transportation Program (CTP) at the CEC to provide grants, loans, and other funding opportunities to develop and deploy innovative fuel and vehicle technologies to support California's climate change policies.

    a) Establishes CTP grant prioritization criteria to include, but not be limited to, a project's ability to reduce certain air pollutants, provide in-state economic benefits, attract non-state matching funds, and deploy projects in nonattainment areas pursuant to the federal Clean Air Act.

    b) Specifies the types of projects eligible for funding from the CTP, including, but not limited to projects that develop and deploy alternative and renewable fuels, ZEV infrastructure and technologies, programs that help commercialize ZEV and alternative fuel vehicles, and workforce development projects that transition workers from fossil fuel industries to clean transportation jobs. (Health and Safety Code §44272)

2) Allocates a portion of smog abatement fees to fund the CTP and sunsets the fee on January 1, 2024. (Health and Safety Code §44060.5)

3) Defines "high road" as 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 improve job quality and job access, including for women and people from underserved and underrepresented populations; meet the skill and profitability needs of employers, and; meet the economic, social, and environmental needs of the community. (Unemployment Insurance Code §14005(r))

4) Allows a Public Entity to enter into or require contractors to enter into a project labor agreement if it includes the following provisions:

a) The agreement 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) The agreement 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) The agreement contains an agreed-upon protocol concerning drug testing for workers who will be employed on the project.

d) The agreement contains guarantees against work stoppages, strikes, lockouts, and similar disruptions of the project.

e) The agreement provides that disputes arising from the agreement shall be resolved by a neutral arbitrator. (PCC §2500)

5) Defines "Labor peace agreement" to mean an agreement between an employer and any bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. In exchange, the employer has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the employer's employees. (BPC §26001)

6) Defines "skilled and trained workforce" to include, among other criteria, skilled journeypersons who are paid at least a rate equivalent to the applicable prevailing hourly wage rate. (HSC § 25536.7)

This bill:

1) Establishes a workforce plan that the CEC and any third-party administrator must use when awarding funds for the ZEV Battery Manufacturing Block Grants Program.

2) Requires block grant applicants to do all of the following in order to obtain a subsidy from the ZEV Battery Manufacturing Block Grants Program:

a) Include a specified environmental safety plan in the block grant application that identifies procedures for safe handling of materials, employee testing for chemical exposure, and environmental testing.

b) Include a workforce plan that requires specified commitments from the employer, including commitments to pay a living wage, hire individuals with employment barriers for at least 30 percent of its workforce, and offer employment to individuals in approved apprenticeships or offer specified training or compensated education. Applicants may satisfy the commitment to hire individuals with employment barriers by showing that the employer has made a good faith effort to hire those individuals.

c) For applicants with more than five employees, attest that the applicant has entered into a labor peace agreement covering its employees. Applicants that have not entered into a

labor peace agreement must indicate whether they will enter into and abide by a labor peace agreement with any union that communicates its interest in representing any classification of the applicants' employees.

d) Include in the application any current collective bargaining agreement between the applicant and a labor organization representing the project's employees.

3) Requires that each grant application be scored out of 100 points for grantees who pledge to do the following. An applicant that scores 80 point would be eligible for a grant.

a) Pay a living wage (20 points).

b) Create an employee growth plan (20 points).

c) Create and report on safe and healthy working conditions (20 points).

d) Consistently comply with workplace laws and regulations (20 points).

e) Agree to labor peace agreements or collective bargaining opportunities for workers (20 points).

4) Establishes high road standards for block grant recipients and prohibits any awardee that violates specified existing labor, employment, and antidiscrimination laws from obtaining a subsidy through the program.

5) Requires the CEC and any third-party administrator to adopt an annual reporting schedule for block grant awardees to submit documentation demonstrating their compliance with this bill. and specifies penalties for non-compliant awardees, including awardees who fail to report compliance documentation.

6) Authorizes the CEC and any third-party administrator to adopt procedures and criteria to supplement the bill's requirements.

7) Defines, for the purpose of this bill:

a) "Applicant" as a private entity or entities that apply, bid, or seek qualification for a covered financial subsidy pursuant to the program.

b) "Awardee" as a private entity that has been awarded a covered financial subsidy pursuant to the program.

c) "Covered financial subsidy" as a grant awarded by the relevant public agency for the development of battery production capacity, improvement of battery production methods, or remediation of environmental effects of battery production.

d) "Individual with employment barriers" as an individual with any characteristic that substantially limits the individual's ability to obtain employment, including, but not limited to, indicators of poor work history, lack of work experience, employment in nontraditional occupations, long-term unemployment, lack of educational or occupational skills attainment, dislocation from high-wage and high-benefit employment, including

those displaced or dislocated from jobs in the fossil fuel economy, low levels of literacy or English proficiency, disability status, or welfare dependency.

e) "Labor peace agreement" as an agreement between an applicant and any union that, at minimum, includes all of the following:
   i) A prohibition on the union and its members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business.
   ii) A prohibition on the applicant from engaging in a lockout of its employees.
   iii) An agreement by the applicant not to disrupt efforts by the union to communicate with, and attempt to organize and represent, the applicant's employees.
   iv) Union access at reasonable times to areas in which the applicant's employees work for the purpose of meeting with employees to discuss their rights to representation, employment rights under state law, and terms and conditions of employment.
   v) A methodology for determining whether the union has been chosen as the representative of particular job classifications of the applicant.

f) "Living wage" as at least 167 percent of the state minimum wage set by state statute or local ordinance, if higher. For the state minimum wage, it would currently be $25 per hour.

g) "Program" as the ZEV Battery Manufacturing Block Grants Program administered by the relevant public agency.

h) "Relevant public agency" as the CEC and any entities with which it may contract to award or administer covered financial subsidies, evaluate applicants, or monitor compliance with conditions of covered financial subsidies pursuant to the program.

i) "Subcontractor" as a private entity performing a portion of the work of the awardee through a subcontract or subgrant.

j) "Union" as a bona fide labor organization that is the recognized or certified exclusive bargaining representative of the employees of an employer. A labor organization is bona fide if:
   i) The labor organization represents employees in California as to wages, hours, and working conditions;
   ii) The labor organization's officers have been elected by secret ballot or otherwise in a manner consistent with federal law, and;
   iii) The labor organization is free of domination or interference by any employer or association of employers and has not received improper assistance or support from an employer or association of employers.

8) Makes Legislative findings and declarations and states Legislative intent to support the creation of equitable high-quality battery manufacturing jobs in California through the enactment and implementation of this bill.

COMMENTS

1. Background

Federal Inflation Reduction Act
The Inflation Reduction Act of 2022 (IRA) provides tax credits for electric vehicle (EV) manufacturing using minerals sourced within North America. Under the IRA, an EV will need to have a battery in which at least 80 percent of the market value of its minerals are sourced in North America to qualify for the tax credit. Beginning in 2025, EVs cannot have any battery components or critical minerals sourced from a foreign entity of concern in order to qualify for the maximum available tax credit for the purchase of an EV.

High Road Standards
Last year, the Legislature passed and the Governor signed SB 674 (Durazo, Chapter 875, Statutes of 2022), which 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. The bill required the Department of General Services and the Department of Transportation, and their contractors, to adhere to High Road Jobs Standards on covered contracts worth $10 million or more.

CEC ZEV Battery Manufacturing Block Grant Program
The Budget provided the CEC with funding to administer a block grant program to fund in-state manufacturing of EV components. While the CEC received funding to administer up to $100 million for the block grant, the CEC issued a funding opportunity for a third-party nonprofit administrator to oversee an initial $25 million block grant program (GFO-21-606). In December 2022, the CEC awarded the administration of the $25 million block grant to CALSTART for the PowerForward project, which will design and implement the block grant to promote in-state battery manufacturing for ZEVs and related infrastructure. CALSTART is a national nonprofit that was founded in 1992.

Defining Labor Peace Agreement
The definition of "Labor Peace Agreement" in this bill was modelled after the definition in SB 674 (Durazo - Chapter 875, Statutes of 2022) with a few of distinctions. The rationale is to protect the state's proprietary and economic interests in performing the work without interruption due to the economic effects of a labor dispute. First, the author and sponsor chose to clarify the union shall have reasonable access to employees at reasonable times in order to communicate with and organize employees. Second, the prohibition on the applicant from engaging in a lockout of its employees was specified. Finally, the bill specifies that a labor peace agreement shall include a methodology for determining whether the union has been chosen as the representative of particular job classifications of the applicant. According to the sponsor, the latter provision is in response to recent lack of clarity in another sector of industry in California.

Status of the Industry in California
Since the passage of AB 794 (Carillo - Chapter 748, Statutes of 2021), which attached labor standards to eligibility for various clean vehicle incentive programs administered by the California Air Resources Board for fleet purchasers of new drayage or short-haul trucks, dozens of battery manufacturers have opened with more coming on line every day. The CEC estimates California is currently home to 55 ZEV and ZEV related manufacturers.

According to recommendations from the July 2021 Bluegreen Alliance report *Advancing High Road Standards in Zero-Emission Transportation* "to achieve the state's economic, climate, and equity goals at the least social and economic cost, high road standards elevating job quality are necessary. With regard to hiring and wages, the report recommends offering

industry-specific or economy-wide wage and benefit standards that significantly exceed the California minimum wage to meet industry prevailing wages.

2. Need for this bill?

According to the author, "To meet the clean energy goals outlined in SB 100 (De Leon, 2018) and SB 1020 (Laird, 2022) and the Electric Vehicle adoption targets in the California Air Resources Board's Scoping Plan, California will need to manufacture and purchase large amounts of lithium batteries.

Historically marginalized communities and workers in the manufacturing industry are most impacted by the transition toward non-fossil fuel industries and would most benefit from additional high road job transition support. This is exemplified in the Imperial Valley, near the Salton Sea, where there is a surplus of lithium and communities in need of economic opportunities. As California increases its use and manufacturing of zero-emission vehicles, it is imperative that the incentives we create to support this industry also support high quality, equitable jobs.

The current Zero Emission Vehicle Battery Manufacturing Block Grants Program, for example, lacks guidance on how the program will support goals to provide underrepresented communities with high quality jobs.

SB 322 will establish a ranking system to prioritize businesses who establish a workforce plan to employ individuals with employment barriers when applying for the Zero-Emission Vehicle Battery Manufacturing Grant."

3. Proponent Arguments:

The sponsor, United Auto Workers Region 6 states "The auto industry is a cornerstone of manufacturing jobs in the United States, employing nearly 20,000 people in California and hundreds of thousands of people nationally. But job quality in the auto industry has been compromised by offshoring, reliance on temporary workers, attacks on workers' freedom of association and weakened health and safety enforcement.

UAW members are fighting for a just transition to ensure that changes in the U.S. automotive industry result in quality jobs that benefit workers and their communities. California's investments in EV and battery manufacturing offer a critical opportunity to revitalize U.S. industry and transition workers who build ICE vehicles or whose jobs are in the ICE supply chain to quality jobs in the EV supply chain that promote economic and racial justice.

California has budgeted substantial funding, including $25,000,000 in grants related to zero-emission vehicle battery manufacturing. The state has the responsibility to ensure such financial support offered to businesses to produce batteries domestically provides for the creation of durable, high quality jobs, labor standards, workers' rights, career pathways, and community benefits.

UAW members know that the transition to zero emission vehicles presents an opportunity to preserve and grow high quality jobs in the EV supply chain, including in battery manufacturing. SB 322 (Becker) capitalizes on this opportunity by ensuring that battery

manufacturers receiving public funds follow our laws, protect the safety of workers, and provide family-sustaining jobs for workers that serve as engines of economic development for their communities. These policies will encourage high road employment practices in highly strategic sectors of California's economy.

SB 322 will link climate goals with high road job creation by conditioning eligibility for grant funding on complying with labor, workplace safety, and anti-discrimination and leave laws, and proper classification of workers. To ensure that the development of the battery industry also protects the air, soil, and water that our communities rely on, the bill also requires applicants to submit an environmental safety plan.

SB 322 amplifies the impact of public funds used to meet its climate goals by conditioning that support on also meeting employment objectives like providing quality jobs and promoting racial justice by ensuring opportunities in communities of working people of color. It does this by requiring applicants to commit to hiring workers with employment barriers and to complete a workforce application. This competitive scoring system evaluates applicants based on their payment of living wages, investments in training programs, compliance with health and safety and labor laws, and adoption of labor peace agreements. By attaching high road standards to public subsidies and creating a competitive process that prioritizes job quality, California can reduce income and racial inequality while also reducing emissions."

4. Opponent Arguments:

None received

5. Double Referral

This bill was first referred to the Senate Committee on Environmental Quality, where it passed 11-3.

6. Prior Legislation:

SB 84 (Gonzalez, 2023) and AB 241 (Reyes, 2023) would each extend and revise the CTP to prioritize projects that meet certain air quality improvement goals and provide equity-based investments in disadvantaged communities. The bill would have specified that at least 50 percent of CTP monies must be allocated for certain types of projects, including programs that promote ZEV car-sharing in low-income and disadvantaged communities. As of April 21, 2023, *SB 84 is pending in the Senate Committee on Environmental Quality and AB 241 is pending in the Assembly Committee on Natural Resources.*

SB 740 (Cortese, 2023) would extend labor requirements to contracts awarded, extended, or renewed on or after January 1, 2024, by an owner or operator of a stationary source that is engaged in manufacturing hydrogen, biofuels, lithium batteries, or certain specified chemicals, in mining or beneficiating lithium, or in capturing, sequestering, or using carbon dioxide in specified conditions.

SB 822 (Durazo, 2023) would establish an Interagency High Road Team (Team) and charge the Team with creating high road evaluation metrics, including but not limited to, a set of principles, procedures, scoring rubrics, and contract application metrics pertaining to

contractor applicant employment practices, including but not limited to, practices related to a contractor's employee wages, benefits, and working conditions, and the contractor's record of compliance with labor laws.

SCR 24 (Bradford, 2023) recognizes the human rights abuses, including child slave labor, occurring in cobalt mines in Africa and resolves that California should take steps to bring a greater proportion of mineral extraction for batteries in-state to reduce the state's reliance on foreign sources of these minerals. This resolution is currently pending in the Assembly.

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 680 (Burke - Chapter 746, Statutes of 2021) required increased workforce standards on projects which utilize Greenhouse Gas Reduction Fund grants, including the payment of prevailing wage for construction projects.

SB 589 (Hueso - Chapter 732, Statutes of 2021) expanded the types of projects eligible for funding from the CTP to include projects that develop in-state supply chains and the workforce for raw materials and components needed for ZEV manufacturing. The bill also expanded the groups the CEC must consult as part of CTP workforce development efforts.

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

AB 1657 (E. Garcia - Chapter 271, Statutes of 2020) authorized the CEC to convene a blue ribbon commission on lithium extraction in California and submit a report to the Legislature by October 1, 2022, which must include findings and recommendations from the blue ribbon commission regarding actions to develop lithium extraction from geothermal brines.

AB 2127 (Ting - Chapter 365, Statutes of 2017) required the CEC to conduct a statewide assessment of the EV charging infrastructure needed to support the levels of EV adoption required for the state to meet its goals of putting at least five million ZEV on California roads by 2030 and of reducing emissions of GHG to 40 percent below 1990 levels by 2030.

AB 1697 (Bonilla - Chapter 446, Statutes of 2016) added prioritization criteria for the CTP to prioritize projects that transition workers to the alternative and renewable fuel and vehicle technology sector. The bill also added criteria for workforce development programs eligible for CTP funding.

SUPPORT

United Auto Workers Region 6 (Sponsor)
California Environmental Voters
California Labor Federation, AFL-CIO

California Teamsters Public Affairs Council
Jobs to Move America
Natural Resources Defense Council
Sierra Club
Sparkz, INC.

OPPOSITION

None received

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

Bill No:	SB 382	**Hearing Date:**	April 26, 2023
Author:	Becker		
Version:	April 18, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: California Workforce Pay for Success Act

KEY ISSUE

Should the Legislature establish a high road training program to create a pathway for entry into the workforce and provide upward mobility for incumbent workers?

ANALYSIS

Existing law:

1) 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))

2) Defines "social innovation financing contract", also referred to as a "pay for success contract," as a contractual agreement between government, private investors, and service

providers, wherein private investors agree to provide financing to service providers to achieve social outcomes, and the government agency agrees to pay a return on investment to the investors if the program's outcomes are achieved by the service provider. (Government Code § 97008(b))

3) Establishes the Social Innovation Financing Program, to be administered by the Board of State and Community Corrections, aimed to reduce recidivism, through "pay for success" or social innovation financing, including by addressing homelessness, substance use disorder and unemployment among specific demographic groups. (Government Code §97010(a))

This bill:

1) Establishes the California Workforce Pay for Success Program (Program) to assist workers facing economic, social, and structural barriers to employment and career advancement.

2) Requires the program to enter into workforce pay for success contracts, as defined, with eligible organizations that serve qualified participants.

3) Requires the California Workforce Development Board (WDB) to establish a selection process for the Program and solicit proposals from eligible organizations.

4) Requires LWDA and WDB to convene a workgroup to advise the WDB on program design.

5) Requires, upon appropriation of funds by the Legislature, the creation of the Workforce Pay for Success Program Fund for purposes of the Program, and requires the Board, on or before January 1, 2026, to submit a report to the Department of Finance and the Legislature regarding implementation of the program.

6) Defines the following:

   a) "Eligible organization" as a 501(c)(3)nonprofit organization that provides job training and workforce services, including, but not limited to, occupational skills training, on-the-job training, workplace training and cooperative education programs, skills upgrade and retraining, entrepreneurial training, job readiness training, adult education, and literacy activities combined with training, and customized training.

   b) "Employer" as a high road training partnership employer.

   c) "Quality job" as a job that provides family sustaining wages, is stable, predictable, and safe and free from discrimination, and that provides career advancement and mechanisms to include worker voices and agency in the workplace, paid time off, and, to the extent possible, health insurance, and retirement benefits.

7) Makes Legislative findings and declarations.

COMMENTS

1. Background

The state has successfully established partnerships between local governmental agencies, private investors, nonprofit organizations, and for-profit service providers to facilitate the use of social innovation financing to achieve measurable social benefits. California has used social investment strategies in the form of a Social Innovation Financing Program in which private investors agreed to provide financing to service providers to achieve social outcomes agreed upon in advance. In this program, the government agency party to the contractual agreement agreed to pay a return on the investment if successful programmatic outcomes were achieved by the service provider.

Recently, the Future of Work Commission found "ensuring that displaced workers from shrinking occupations are retrained with appropriate skills and matched with growing occupations" to be one of the most critical challenges facing California. By linking underserved communities, which historically have less access to the workforce and a higher population of workers in dwindling industries, to expanding industries, California can continue to grow its leadership in new technologies while supporting underserved workers.

Social investment strategies can serve to meet this very need by optimizing worker productivity and turning unemployed or underemployed people into vital contributors to the economy. If deployed successfully, they can also reduce government costs in the long run. These strategies have been shown to be effective in addressing racial and economic inequity.

2. Need for this bill?

According to the author, "California has the fourth largest economy in the world, but we still struggle with getting people who face challenges with a quality job in high quality careers, such as formerly incarcerated youth, immigrants, and refugees. The goal of SB 382 is to get people from underserved communities into job training programs that have a history of success as quickly as possible.

The California Workforce Pay for Success Act will create a social investment strategy to turn unemployed or underemployed people into vital contributors to our economy that will save taxpayer dollars in the long run.

To accomplish this goal, this bill creates [a separate fund] in the state's Labor and Workforce Development Agency to accelerate grant awards to high performing non-profit workforce training programs that have consistently been able to effectively train and place people in successful careers. In cases where a non-profit doesn't meet the goals set out in its application, the state would be free to terminate the contract and only pay for the results that were achieved.

One recent training program for underserved people that used the Pay for Success model found its graduates earned more than twice as much money annually four years after leaving the program than they did before entering the program. That's the kind of success we are all looking to see on a statewide level with SB 382."

2. Proponent Arguments

According to San Francisco Jewish Vocational Service (SF JVS), this bill would "enable proven successful job training programs to serve individuals with employment barriers and

help them enter or move up a pathway to high quality jobs. These underserved populations include formerly incarcerated, youth, immigrants and refugees. SB 382 would set up an outcomes-based funding program based on the following core principles:

1. Clearly defined outcomes
2. Data driven decision making
3. Outcomes-based payment and
4. Strong governance and accountability structures are in place.

SF JVS was founded fifty years ago to meet the needs of both the huge influx of refugees from the former Soviet Union, and the workers who had been displaced during turbulent economic times. The last several years laid bare the historically deep racial inequities that our country must reckon with and mend, and for JVS this means continually pushing ourselves to be bolder and more innovative in how we structure and carry out our work. Last year, 88% of those served were Black, Latinx or Asian. People of color continue to be most impacted by systemic discrimination, income inequality, and occupational exclusion – factors that act as significant barriers to securing quality, family-sustaining careers with opportunities for economic advancement and wealth-building. These persistent systemic inequities highlighted the urgency to center our work even more deeply in racial equity, and a systemic approach, to build a strong and inclusive workforce where all Californians can thrive.

California, with the fourth largest economy in the world, has a high level of income inequality. Despite increasing levels of higher education, social mobility is stalled. While the State's level of unemployment is relatively low, California's leadership as the center of emerging industries will only be maintained if there is a linkage between workers in shrinking occupations and those who have had a weaker connection to the workforce employed by expanding industries…California's diverse population, many from underserved populations, are a great resource for economic growth for emerging industries as well as those sectors likely to expand…

Workforce Pay for Success provides a tool for results-based government financing leveraging programs that have shown consistent success measured by a stated markers for success. High-performing non-profits and intermediary organizations would be able to scale effective programs and services but would be required to repay the funds if the stated goals were not accomplished. The purpose would be to expand and scale quality services, focus on measurement and outcomes, attract new resources and optimize government resources for programs with demonstrated results… Creating a pathway for entry into the workforce and upward mobility for incumbent workers would be the focus. Streamlining the funding to make it more efficient would help to quickly meet the needs of California's dynamic workforce."

3. Opponent Arguments:

The Hospitality Training Academy (HTP) states "The HTA is a recipient of federal, state and local government funding as well as philanthropic dollars. As an active, collaborating partner of both the Los Angeles City and County Workforce Development Boards and a champion of workforce system alignment, the HTA reviewed SB 382 (Becker) to determine its impact on the workforce ecosystem in Southern California.

SB 382 is an unnecessary bill that does not address any issues nor bring any funding to the table. In fact, SB 382 creates additional hurdles for the State of California's Workforce Development Board (CWDB) by forcing it to create and staff a "Workforce Pay for Success Program Board" and then pay each board member $100 per day. The CWDB is already overly tasked with critical projects and underfunded, and this bill does nothing to bring additional resources to the table."

4. Prior Legislation:

SB 472 (Caballero, 2021) would have extended the Social Innovation Financing Program to award a new round of grants to five counties for recidivism reduction programs. *This bill was held on suspense in the Assembly Appropriations Committee.*

AB 862 (Maienschein, 2017) would have established the Social Innovation Financing Program of 2018. *This bill was held on the Senate suspense file.*

AB 1837 (Atkins - Chapter 802, Statutes of 2014) established the Social Innovation Financing Program, administered by the Board of State and Community Corrections, which provided grants to three counties for the purpose of utilizing pay-for-success contracts to reduce recidivism.

SUPPORT

San Francisco Jewish Vocational Service (Co-sponsor)
JVS-SoCal (Co-sponsor)
California Retailers Association
Goodwill

OPPOSITION

Hospitality Training Academy

-- END --

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

Bill No:	SB 375	**Hearing Date:**	April 26, 2023
Author:	Alvarado-Gil		
Version:	February 9, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Employment: employer contributions: employee withholdings: COVID-19 regulatory compliance credit

KEY ISSUE

Should the state provide a tax credit, as specified, to employers for their costs to comply with Cal/OSHA's recently implemented COVID-19 Prevention / Non-Emergency Standard (CP/NES) regulation?

ANALYSIS

Existing law:

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

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

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

4) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program (IIPP) that must include, among other things, a system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices and the employer's methods and procedures for correcting those unsafe or unhealthy conditions and work practices in a timely manner. The IIPP must also include the employer's system for communicating with employees on occupational health and safety matters. (LC §6401.7)

5) Requires employers to withhold specified amounts from their employee payroll and transfer those amounts to EDD for purpose of paying the Unemployment Insurance Tax (UI), State Disability Insurance Tax (SDI), Employment Training Tax (ETT) and the California Personal Income Tax (PIT). (Unemployment Insurance Code (UIC) § 13020 et seq.)

6) Declares that COVID-19 is a workplace hazard that employers must address as part of their IIPP and requires them to include their COVID-19 procedures in their written IIPP or maintain them in a separate document. (Cal/OSHA's CP/NES Regulation, 8 CCR 3205 (c))

7) Requires employers to implement and maintain COVID-19 procedures, as specified, relating to COVID-19 Prevention, COVID-19 Outbreaks, COVID-19 Prevention in Employer-Provided Housing, and COVID-19 Prevention in Employer-Provided Transportation. (8 CCR 3205, 3205.1, 3205.2, and 3205.3)

This bill:

1) Permits an employer to claim, for the 2023 and 2024 calendar years, a COVID-19 regulatory compliance credit, as specified, in an amount equal to the employer's verifiable costs of complying with Cal/OSHA's recently implemented CP/NES.

2) Limits the credit amount for an employer with 100 or more employees to fifty dollars ($50) per employee and for an employer with less than 100 employees to one hundred dollars ($100) per employee but in no case can the claimed amount exceed that which the employer would have remitted to EDD for the last quarter of the relevant calendar year for employee withholdings.

3) Requires the employer to claim the credit on the employer's last quarterly return for the relevant calendar year.

4) Requires EDD to credit the amount the employer claims against the employer's required remittable amounts for employee withholding for the last quarter of the relevant calendar year.

5) Specifies that the bill makes no change to the amount of taxes the employer is required to withhold from employees nor those required to be reported to the employee, EDD, the Franchise Tax Board, and the Internal Revenue Service.

6) Specifies that the bill does not require the employee to pay additional taxes nor otherwise alters the employee's tax liability.

7) Declares legislative intent that the bill does not require an appropriation of moneys by reducing amounts remitted to EDD that EDD would otherwise deposit in the General Fund.

8) Authorizes EDD to adopt necessary or appropriate rules and regulations to implement the bill's provisions.

9) Defines "employee" to have the same meaning as the Cal/OSHA regulations, as specified.

10) Defines "Quarterly return" to mean the form on which the employer reports its employer contributions and employee withholdings.

11) Establishes a sunset date of December 1, 2025.

COMMENTS

1. Background

At the start of the COVID-19 pandemic, the Governor and the President declared public health emergencies that imposed numerous requirements on employers to help combat COVID-19. The federal and state governments provided various economic aid packages, including grants, to help offset the resulting economic impact from the emergency regulations affecting employers and their employees. Recently, the federal and state governments have declared an end to the previously declared emergencies and a transition from the extraordinary relief efforts that were in place to a new normal, non-emergency condition in which employers must incorporate the effects of endemic COVID-19 into the regular course of economic activity.

To that end, Cal/OSHA issued its CP/NES which contains many of the previous requirements on California employers from the federal and state emergency regulations. However, since previous economic aid packages are expiring, the bill's sponsor and supporters seek to provide another mechanism to compensate employers for their costs related to complying with the CP/NES. This bill would permit employers to take a credit for their specified compliance costs from amounts they transfer to EDD from their payroll tax withholding.

The committee notes that this mechanism would result in fewer tax revenues flowing into the General Fund from the withholding tax. Because the bill requires EDD to credit amounts claimed against tax amounts required to be remitted for the Personal Income Tax, the bill should not affect revenue for other programs collected through the withholding tax, such as the Unemployment Insurance fund.

Nevertheless, the sponsor argues that the CP/NES primarily serves a public health purpose as opposed to addressing an inherent risk directly associated with the workplace and that the costs associated with that purpose should be borne by the state not by individual employers who face statewide compliance costs of $3 billion annually.

The opposition notes that the CP/NES requires employers to exclude employees who test positive for COVID-19 from the workplace for their entire infectious period but, unlike the previous emergency regulations, the CP/NES does not require employers to provide "exclusion pay" to employees who fall ill to COVID-19. They argue that this bill would essentially reward employers who already have a legal responsibility to ensure safe work environments; and that the better approach would be to explore ways to restore exclusion pay to mitigate economic harm to employees.

2. Need for this bill?

According to the author:

"California employers are required to comply with new COVID-19 Prevention Non-Emergency Regulations. These post-pandemic set of regulations focus on preventing the spread of COVID-19, a community spread virus.

These regulations are placing substantial costs on California businesses employers. This falls particularity hard on employers (especially small employers) who do not have the deep pockets to provide the social safety net for a public health concern."

3. Proponent Arguments

According to a coalition of employer associations, including the sponsor:

"California employers simply cannot continue to serve as the social safety net for a community spread virus. Keeping that public policy approach in place will no doubt put additional employers out of business as many are still recovering from the pandemic and struggling to keep their doors open."

In rural communities and for small employers, this new regulation is incredibly burdensome. Small public agencies simply don't have the budgetary margins to incur two more years of COVID-19 regulatory compliance costs while federal and state COVID-19 financial support are falling by the wayside. Additionally, small employers in rural California don't have the ability to increase prices or expand markets to recover the costs of compliance with the new regulations. This is especially troublesome when mixed with the challenging realities of economic slowdown, global inflation, an uneasy stock market, and an evolving monetary situation."

4. Opponent Arguments:

The California Labor Federation directs attention to the regulation's material benefit to employers as identified by the Department of Finance's (DOF) Standardized Regulatory Impact Assessment which estimates direct annual benefits (in avoided loss of worker productivity and avoided illnesses and death) from $10.5 to $41.2 billion in 2023 and $5.8 to $39.7 billion in 2024 against costs to all businesses of $489 million to $1.4 billion in 2023 and $198 million to $1.3 billion in 2024.

In contrast, DOF estimates that employees will experience costs in lost wages and benefits resulting in the regulation's exclusion requirements at $53.8 million to $215 million in 2023 and $26.9 to $ $215 million in 2024, with no corresponding offset.

"Thus, the COVID 19 prevention standard, as it currently exists, extends tens of billions of dollars in savings to employers while denying workers tens to hundreds of millions in lost wages and benefits. There is no doubt that massive economic benefits are already flowing to employers."

"SB 375, meanwhile, would extend equally massive tax credits to employers for complying with existing law that already deprives workers of paid time off when they fall ill with COVID-19 on the job. Under this proposal, roughly 99% of employers – those with fewer than 100 workers – could claim up to $100 per employee to cover the "verifiable costs of complying with" the COVID-19 prevention standard. Larger employers, or those with over 100 workers, could claim up to $50 per employee. Only a short list of employers would not be covered by this tax credit, and no mention is made of accounting for a given employer's savings under the regulation. As a result, the amount of money lost to this program would be astronomical."

5. Prior Law:

Executive Order No. E 20/21-182 allocated $500 million from the Disaster Response Emergency Operations Account to fund the COVID-19 Relief Grant Program, in order to provide financial relief to small businesses suffering from the economic impacts of the COVID-19 pandemic.

SB 87 (Senate Committee on Budget), Chapter 7, Statutes of 2021, established the California Small Business COVID-19 Relief Grant Program within the CalOSBA to assist qualified small businesses affected by COVID-19 through the administration of grants.

SB 151 (Senate Committee on Budget), Chapter 74, Statutes of 2021, established the California Microbusiness COVID-19 Relief Grant Program, to fund regional programs that provide grants of $2,500 to eligible microbusinesses that have been impacted by COVID-19.

AB 178 (Ting), Chapter 45, Statutes of 2022, appropriates $250 million from the California Emergency Relief Fund to GO-Biz for relief grants for small businesses and non-profits.

SUPPORT

California Association of Winegrape Growers (Sponsor)
Acclamation Insurance Management Services
Agricultural Council of California
Allied Managed Care
California Apartment Association
California Assisted Living Association
California Association for Health Services At Home
California Association of Boutique and Breakfast Inns
California Association of Health Facilities
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Attractions and Parks Association
California Chamber of Commerce
California Craft Brewers Association
California Credit Union League
California Farm Bureau Federation
California Grocers Association
California Hotel & Lodging Association
California League of Food Producers
California Manufacturers and Technology Association
California New Car Dealers Association
California Restaurant Association
California Retailers Association
California Self Storage Association
California Staffing Professionals
California State Association of Counties
California Travel Association
California Trucking Association
Family Winemakers of California
Monterey County Vintners & Growers Association

San Gabriel Valley Economic Partnership
Western Electrical Contractors Association
Western Growers Association

OPPOSITION

California Labor Federation

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

Bill No:	SB 422	**Hearing Date:**	April 26, 2023
Author:	Portantino		
Version:	March 20, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: California Environmental Quality Act: expedited environmental review: climate change regulations

KEY ISSUE

Should the Legislature require certain labor standards for specified pollution control projects to use the expedited California Environmental Quality Act (CEQA) review process?

ANALYSIS

Existing law:

1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or Environmental Impact Report (EIR) for this action, unless the project is exempt from CEQA. (Public Resources Code §21000 et seq.) If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1))

2) Defines "project" as the installation of pollution control equipment and other components necessary to complete the installation of that equipment that reduces greenhouse gases (GHGs) by a rule or regulation of an agency pursuant to the California Global Warming Solutions Act of 2006 (CGWSA). (Public Resources Code §21159.1-21159.2)

3) Defines "project labor agreement" as a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code. (Public Contract Code §2500(b)(1))

4) Defines "skilled and trained workforce" as meeting all of the following criteria:

    a) All those performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an approved apprenticeship program and at least 60 percent of the workers are graduates of an apprenticeship program for the applicable occupation, except the following shall comprise at least 30 percent of the following are skilled journeypersons shall continue to apply in the occupation of teamster: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

b) For an apprenticeable occupation in which no apprenticeship program had been approved before January 1, 1995, up to one-half of the graduation percentage requirements may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before approval of an apprenticeship program for that occupation in the county in which the project is located.
c) The requirements of a) and b) can be met if they are satisfied in a particular calendar month.
d) The contractor or subcontractor need not meet the apprenticeship graduation requirements if, during the calendar month, the contractor or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the contract or project.
e) A subcontractor need not meet the apprenticeship graduation requirements if they are not a listed public works subcontractor, are a substitute for a listed subcontractor, and do not exceed one-half of 1 percent of the price of the contract. (Public Contract Code §2600 et seq.)

5) Defines "public work" to include, among other things, construction, alteration, demolition, installation or repair work done under contract and paid for in whole or in part out of public funds. (Labor Code §1720)

This bill:

1) Requires specified public agencies, when adopting a rule or regulation requiring the reduction in emissions of GHGs, criteria air pollutants, or toxic air contaminants, to perform an environmental analysis of the reasonably foreseeable methods of compliance.

2) Requires environmentally mandated projects to meet the following labor requirements to utilize the established expedited review processes:

a) A project undertaken by a public agency shall be a public work for which prevailing wages will be paid.

b) For a project undertaken by a public agency, an entity shall not be prequalified or shortlisted or awarded a contract by the public agency to perform any portion of the project unless the entity provides an enforceable commitment to the public agency that the entity and its contractors and subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, except if any of the following requirements are met:
   i) The public agency has entered into a project labor agreement that will bind all contractors and subcontractors at every tier performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.
   ii) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the public agency before January 1, 2024.
   iii) The entity has entered into a project labor agreement that will bind the entity and all of its contractors and subcontractors at every tier performing work on the project or contract to use a skilled and trained workforce.

c) Certify to the lead agency that it is a public works project or if it is not entirely a public works project, all construction workers employed in the execution of the project will be

paid at least the general prevailing rate of per diem wages for the type of work and geographic area, except that apprentices registered in approved programs may be paid at least the applicable apprentice prevailing rate.

d) Certify to the lead agency that a skilled and trained workforce will be used to perform all construction work on the project or contract. The applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the project and the applicant will provide a monthly report demonstrating compliance and open to public inspection.

3) Provides that an applicant that fails to provide a monthly report demonstrating compliance shall be subject to a civil penalty of $10,000 per month for reach month the report was not provided within 18 months of project completion.

4) Provides that any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of $200 per day for each worker employed in contravention of the skilled and trained workforce requirement within 18 months of project completion.

5) Specifies that the environmentally mandated project provisions do not apply to an action that is not subject to CEQA.

6) Makes Legislative findings and declarations.

COMMENTS

1. Need for this bill?

The specifics of the CEQA streamlining provisions are the purview of the Senate Committee on Environmental Quality, which this bill passed with a 7-0 vote on April 19, 2023. In summary, CEQA includes master EIRs, focused EIRs, and expedited environmental review for certain "environmentally mandated projects." Master EIRs apply to specified projects under these provisions and allow for limited review of subsequent projects described in the master EIR. A focused EIR is an EIR on a subsequent project identified in a master EIR. There are also special procedures for "environmentally mandated projects" for specific state agencies. Those special procedures include requiring a more limited analysis for rules and regulations requiring installation of pollution control equipment, allowing focused EIRs for pollution control equipment required by rules or regulations under certain conditions, and applying specified expedited deadlines. These procedures were further updated in 2010 with the passage of AB 1846 (V. Manuel Perez), which revised the list of applicable state entities, added CGWSA related projects, and revised the type of analysis required for rules and regulations subject to these provisions.

This bill would alter the above expedited CEQA processes by expanding them to include projects which allow specified public agencies to comply with a performance standard, treatment requirement, or energy efficiency standard. It would also allow projects which require the installation of pollution control equipment or implementation of a facility process change necessary to comply with the CGWSA. However, SB 422 would then condition access to these expedited CEQA provisions on making these projects public works, or for private entities, certifying that all contractors and subcontractors will pay prevailing wage to

their workers and utilize a "skilled and trained workforce."

According to the author, "California is a leader in addressing climate change policy, innovation, and technology. To implement the State's ambitious climate goals and achieve the target reductions in emissions, significant modifications must be made to existing facilities and infrastructure. California must act with urgency to ensure that carbon reduction projects can be built in a streamlined and coordinated fashion, without unnecessary delays or redundant costs. Providing a focused environmental impact report (EIR) for projects that work towards the state's climate goals will enable rapid investment and a skilled workforce.

The California Global Warming Solutions Act of 2006 (AB 32) created a comprehensive program to reduce greenhouse gas (GHG) emissions. The resulting Scoping Plan developed by the California Air Resources Board (CARB) outlined the state's strategy towards achieving its climate goals. These goals include a 40% reduction below 1990 levels of GHG emissions by 2030 and carbon neutrality by 2045. Planning to meet both goals—especially the rapidly-approaching 2030 goal—will take a massive, coordinated effort.

Last year the legislature adopted AB 1279 (Muratsuchi) - Chapter 337, Statutes of 2022 - The Climate Crisis Act which declared it is the policy of the state to achieve net-zero greenhouse gas (GHG) emissions as soon as possible, but no later than 2045, to achieve that goal with at least an 85% reduction in GHG emissions, and to achieve and maintain net negative GHG emissions thereafter. CARB adjusted the 2022 Scoping Plan to address this goal. However, our near-term energy, air quality, and climate change goals remain in question due to permitting, as noted throughout CARB's Appendix J: Uncertainty Analysis, which was part of the 2022 Scoping Plan.

The Scoping Plan scenario calls for broad deployment of GHG reduction and alternative technologies; a build-out of electricity generation, storage capacity, and transmission; and other infrastructure-related projects. However, projects can be weighed down by inconsistencies and administrative delays.

To ensure that the state can meet its GHG reduction goals and minimize unnecessary duplication of work and expenses, SB 422 will clarify and streamline the California Environmental Quality Act (CEQA) process for projects that are necessary to comply with the state's climate goals. These policies will help facilitate the building of climate-oriented projects by providing certainty in designing, financing, and permitting. SB 422 will eliminate unnecessary layers of environmental review for specific projects without compromising necessary environmental review."

2. Proponent Arguments:

According to the State Building and Construction Trades Council, "The types of projects and modifications needed for the state to meet its GHG-reduction goals can be weighed down by administrative delays. These include a build-out of electricity generation, storage capacity, transmission, and other infrastructure-related projects. By requiring specified public agencies, including air pollution control districts and air quality management districts to perform an environmental analysis of the reasonably foreseeable methods of compliance, SB 422 will formalize the process and make it less burdensome.

This bill would additionally authorize the use of a focused EIR by certain public agencies for a project that consists of the installation of pollution control equipment to achieve compliance with an energy efficiency or performance standard. To use a focused EIR, the bill would require the use of a skilled and trained workforce and the payment of the prevailing wage to the workers on these projects. This requirement will ensure that workers on these projects will be protected, taxpayer dollars will be spent on only the most highly skilled and trained workers, and public agencies will receive projects done once, done right, in the most efficient way possible.

Given the large amount of work that the state still needs to complete to meet our ambitious GHG reduction goals, these projects will need to employ thousands of construction workers, thereby churning the apprenticeship system and creating more journeymen and journeywomen. California will prove that meeting the climate crisis can be done in conjunction with the economic benefits that come from paying construction workers a living wage and using only the most highly skilled and trained workers."

According to the California Council for Environmental and Economic Balance, "the need to meet the state's ambitious climate goals calls for a new approach to planning and building infrastructure in California. The fundamental transformation of our transportation and energy systems will require infrastructure buildout at a pace and scale not seen since the New Deal. California is now developing a blueprint to meet longer-term climate goals, including the targets set by SB 32 (Pavley, 2016) and AB 1279 (Muratsuchi, 2022), the state's greenhouse gas emissions must be 40 percent below 1990 levels by 2030 and carbon neutral by 2045. To have a chance of meeting these ambitious goals, we must recognize the need to adapt the state's permitting process to meet this moment. We cannot afford delays in the permitting process that challenge and delay construction of necessary environmental, energy, and transportation projects.

SB 422 prioritizes climate policy and shows the world that California is serious about building a wide array of carbon-reducing projects to meet its climate goals. It would allow the use of a focused EIR for projects that meet certain criteria, which would streamline the permitting process and help reduce GHG emissions.

In addition to its environmental benefits, SB 422 has the potential to create thousands of new prevailing wage jobs for Californians in new and emerging industries. Many carbon-reducing projects that are currently being discussed or going through the approval process can benefit from this bill. Without committing to streamlining the permitting process, many of these projects will ultimately be built elsewhere without California workers."

3. Opponent Arguments:

None received

4. Double Referral:

This bill was first heard in the Senate Committee on Environmental Quality, where it passed 7-0 on April 19, 2023.

5. Prior Legislation:

AB 1279 (Muratsuchi - Chapter 337, Statutes of 2022) declared it the policy of the state to achieve net-zero GHG emissions no later than 2045, to achieve that goal with at least an 85% reduction in GHG emissions, and to achieve and maintain net negative GHG emissions thereafter.

SB 1136 (Portantino, 2022) was identical to this bill. In his veto message, the Governor stated the bill would "create significant delays in the promulgation of environmentally beneficial regulations. This bill also exposes state and local public agencies to new litigation risks and results in millions of dollars in costs not accounted for in the budget."

SUPPORT

California Council for Environmental & Economic Balance (Co-sponsor)
State Building and Construction Trades Council of California (Co-sponsor)
California Carbon Solutions Coalition

OPPOSITION

None received

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

Bill No:	SB 765	**Hearing Date:**	April 26, 2023
Author:	Portantino		
Version:	April 11, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Teachers: retired teachers: teacher preparation: student financial aid

KEY ISSUE

Should the state: (1) exempt a CalSTRS retiree who returns to work to fulfill a critical need in a teaching position from postretirement compensation limits, (2) increase the maximum award amount for the Teacher Residency Grant Program to $40,000 per teacher candidate, and (3) annually exempt 1,000 Cal Grant awardees from demonstrating financial need if they agree to enroll in a teacher preparation program after earning their baccalaureate degree.

This analysis only assess the bill's retirement issues related to the postretirement compensation limit exemption in (1). The Senate Education Committee has analyzed the bill's other provisions related to education policy in (2) and (3).

ANALYSIS

Existing law:

1) Prohibits, pursuant to the Public Employees' Pension Reform Act (PEPRA), a retired person from serving, being employed by, or being employed through a contract directly by, a public employer in the same public retirement system from which the retiree receives the benefit without reinstatement from retirement, except as specified. This provision applies to any person who is receiving a pension benefit from a public retirement system and shall supersede any other conflicting provision. (Government Code (GC) § 7522.56)

2) Exempts from PEPRA's post-retirement work rules a person who is retired from the California State Teachers' Retirement System (CalSTRS), and *who is subject to* Education Code (ED) §§ 24214, 24214.5, or 26812. (GC § 7522.56 (h)).

3) Permits a retired CalSTRS member to perform retired member activities, as specified, subject to a limitation on compensation equal to one-half the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year. (ED § 24214)

4) Reduces the retiree's monthly allowance by an amount in excess of the compensation limitation, as specified. (ED § 24214 (g))

5) Sets the compensation limitation at zero dollars ($0) during the first 180 calendar days after the most recent retirement of a member retired for service, so that during that period the retiree's pension will be reduced by any amount earned, as specified. (ED § 24214.5)

6) Provides an exemption to the 180-day zero limitation rule if the retiree has attained normal retirement age and if the retiree's appointment has been publicly approved by the employer's governing body, as specified. (ED § 24214.5)

7) Requires the Superintendent, the county superintendent of schools, or the chief executive officer of a community college to submit all documentation required by CalSTRS to substantiate the retiree's eligibility for postretirement employment pursuant to the compensation limitation, as specified. (ED § 24214.5)

This bill:

1) Exempts the compensation earned by a member who retired from CalSTRS from the postretirement compensation limitation if the member returns to perform retired member activities for an employer, excluding a community college district.

2) Requires an employer to submit all documentation required by CalSTRS to substantiate the eligibility of the retired member for the exemption.

3) Prohibits a retired member from performing retired member activities until after CalSTRS have received the documentation. The documentation shall include certification, under penalty of perjury, of the following:

    a) The member is returning to fulfill a critical need in a teaching position.

    b) The employer first advertised the teaching position for appointment to current active or inactive members of the program with the necessary qualifications to perform the requirements of the teaching position, and no qualified current active or inactive member was available to be appointed.

    c) The appointing authority made a good faith effort to hire a retired member who reinstated to active membership for the teaching position at the same salary that was offered as first advertised.

    d) The appointing authority, having tried and failed to hire a current active or inactive member or a reinstated retired member, hired a retired member, and the salary offered to the retired member does not exceed the salary that was offered as first advertised.

    e) The compensation paid for the teaching position is not less than the minimum, nor more than the maximum, paid by the employer to other employees performing comparable duties.

    f) The teaching position vacancy occurred due to circumstances beyond the control of the employer. The termination of employment of the retired member with the employer is not the basis for the need to acquire the services of the retired member.

g) The member did not receive additional service credit or financial inducement to retire.

4) Specifies that the exemption shall commence on the date the retired member is appointed or assigned to the teaching position and shall end on June 30 of that fiscal year.

5) Defines "teaching position" to mean a position requiring certification qualifications authorized by the CTC or a position requiring administrative or supervisory credentials.

6) Specifies that the exemption shall remain in effect only until June 30, 2026, and shall be repealed as of January 1, 2027.

7) Eliminates the existing requirement that the employer's governing board publicly approve the retiree's appointment and intends to seek an exemption from the 180-day zero dollar limitation.

8) Requires instead that the Superintendent, the county superintendent of schools, or the chief executive officer of a community college submit a request to CalSTRS for an exemption to the 180-day rule with certification of the following:

   (a) The nature of the employment.

   (b) That the appointment is necessary to fill a critically needed position before 180 calendar days have passed.

   (c) That the member is not ineligible for the exemption because of a receipt of a retirement incentive.

   (d) That the termination of employment of the retired member with the employer is not the basis for the need to acquire the services of the member.

9) Requires that the member must have attained normal retirement age at the time the compensation is earned to be eligible for the exemption.

10) Eliminates the existing requirement that the Superintendent, the county superintendent of schools, or the chief executive officer of a community college shall submit all documentation required by CalSTRS to substantiate the eligibility of the retired member for the exemption including, but not limited to, the resolution adopted pursuant to that subdivision.

11) Increases the maximum award amount for the Teacher Residency Grant Program to $40,000 per teacher candidate.

12) Beginning with the 2024-25 award year, exempts 1,000 Cal Grant applicants from demonstrating financial need if both of the following are met:

   a) The applicant meets the applicable GPA requirement.

b) The applicant files a statement of intent with the CSAC stating that the applicant agrees to enroll in a teacher preparation program that is approved by the CTC upon completion of the applicant's baccalaureate degree.

COMMENTS

1. Background

The sponsor contends that the current teacher shortage warrants changes to one of the hardest fought reforms in pension law achieved by the Brown Administration. For an analysis of the teacher shortage please see the Senate Education Committee's policy analysis of this bill and the Assembly Public Employment and Retirement Committee's analysis of AB 1877 (Fong) from 2022, which also sought to establish an exemption from CalSTRS' postretirement employment compensation limitation. Both documents report on the disruptions to the teaching pipeline and teacher burnout from the COVID-19 pandemic. The latter also has a substantive analysis of the importance of the postretirement employment limitations to pension plan stability. There are many solutions to the teacher shortage as outlined in those analyses; a wholesale revision to important protections for pension fund stability is not likely one of them.

It is easy to forget that PEPRA came about because the 2008 financial crisis posed a significant challenge to the stability of California's public retirement systems. As asset values plummeted, fund withdrawals from newly unemployed members increased, pension liabilities from previously granted retroactive benefits soared, and liquidity issues complicated pension administrators' response, the state's pension funds required substantial support and substantial reforms (enacted by PEPRA and related legislation) to overcome the short-term crisis and ensure the long-term viability of the plans to continue to meet their responsibilities to the people who dedicate their lives to serving the people of California.

One important element of the reform was to place limits on postretirement employment and to curtail double dipping, the practice of receiving both a retirement benefit and a paycheck for doing the same work for the same employer or group of employers covered by the same pension system. Double dipping by public employees engenders deep misgivings if not outright animosity from the general public (especially in difficult economic times, which most economic prognosticators predict are in our near future) and substantially erodes public support for the continuation of public defined benefit pension plans because of what some disparagingly call pension envy but others see as a rationale reconsideration of the societal value of plans whose trust funds are often eyed (and occasionally abused) by others seeking funding or policy solutions to other, non-pension related concerns, knowing that any economic fallout will eventually be borne by taxpayers.

Public perception alone does not sufficiently explain pension policymakers' concern with double dipping. When retirees can receive their pension and continue to work in their job position while earning their salary, they are unlikely to leave employment, perhaps the very aspect of double dipping the sponsor hopes to encourage to resolve a short-term solution to the teacher shortage. However, in the long term, double dipping harms pension funds since employees who "retire-in-place" stop making contributions to the pension plan, withdraw funds from the plan, and prevent from moving into those positions the next generation of

teachers who otherwise make contributions to the plan that the fund could have invested for 20-40 years before the new members draw their pensions. From the perspective of the plan's financial health, double dipping results in less capital inflow (with fewer opportunities to produce investment return), more capital outflow (with greater need to sell assets at inopportune moments), and reduced prospects for future capital inflow and long-term investment opportunities. We appreciate the challenge of the teacher shortage the sponsor seeks to fix, but we recall an old proverb that even when one is starving, one most save some seeds to grow the next crop.

The bill's supporters may argue that there is no issue here because the schools want as many teachers as they can get; retirees and newcomers. Lack of supply is the problem they seek to solve. But, like all supply issues, that is a short-term problem that will eventually balance out. Scarcity breeds demand. Demand attracts rewards. However, long-term harm to the pension fund is not easily addressed. Like inflation, it sneaks up until it becomes obvious and solutions are particularly painful. Moreover, it is highly unlikely that a revision to the postemployment rules can be confined to public teachers. The bill already includes certificated administrators. Surely, classified staff will be making their case for parity. As they belong to CalPERS, that system too will face demands to permit double dipping. The truth is that this has already been happening through the Governor's COVID-19 pandemic executive orders. The rationale provided then was the emergency warranted the temporary suspension of the policy. Plus ça change, plus c'est la même chose. However, exactly because substantial cyclical macroeconomic crises in the economy can materially affect the plan's asset and liability valuations and its investment return assumptions (both of which then transmute into significant increased pressures on the General Fund), it is critical to buttress the funds now not weaken their foundations.

CalSTRS' postretirement compensation limitation is an elegant solution to the problem of pension double dipping that PEPRA sought to prohibit. It is partly for that reason that PEPRA exempts CalSTRS members *who are subject to the limitation* from PEPRA's postemployment rules. If they are not subject to the limitation, then they are subject to PEPRA's corresponding rules. The limitation allows teachers to work *but caps what they can earn without a reduction to their pension to one-half the median final compensation of the prior year's retiring class*. It provides a reasonable compromise among the competing interests of preventing double dipping, providing school employers additional workforce relief, and giving retirees an option to continue to work part-time while they transition into full-retirement. The 180-day rule (in which the limitation is zero dollars and thus, retirees face a reduction in their pension for every dollar earned in a CalSTRS-covered position for the first six months after they retire) is an essential tool in preventing intentional double dipping. It exists, both in PEPRA and at CalSTRS, to curtail weekend transitions from active employment to retiring in place and also because that period provides a retiree the ability to adapt to postemployment status and make objective decisions based on their needs as to whether they truly want to return to work.

In arguing for this bill, supporters have made much of the education policy imperative to retain and recruit teachers. Meanwhile, they have paid little attention to the pension policy imperative of providing teachers and all pensioners the opportunity to stop work after a long and hard career and simply enjoy their remaining years in activities of their choosing, whether providing childcare for their grandchildren, traveling, or participating in activities to support their local community. Como dijo Don Cheto en su programa del 24 de abril, sobre las personas que ha pasado todo la vida trabajando durisimo, está bien relajarse en el rancho,

asar los chiles, y platicar con los pajaros porque terminar de trabar no debería ser mortal. It takes many people some time to learn that lesson. The 180-day rule helps break the connection to the workplace and gives retirees the ability to reassess their priorities without the pressure or temptation of continuing to work. If they wish to return to the classroom and if their districts can demonstrate a critical need for them, current law has a straightforward process to permit that.

Committee Concerns

In the rush to address a systemic teacher shortage, the committee has concerns that this bill potentially tramples on critical pension policy to protect the long- term viability of CalSTRS and other funds should similar proposals promote changes in PEPRA's post-employment rules. The committee urges care in balancing out these difficult policy goals and encourages further dialogue between the author, stakeholder groups, and committee staff to establish guardrails to mitigate unintended consequences this bill may cause. To address these concerns the committee recommends to the author and sponsor the following:

- Continue to meet with stakeholder groups, particularly CTA and CalSTRS, to work through their concerns regarding both technical and substantive details of the proposal. In particular:
    - Limit the exemption solely to those returning to fulfill a critical need in a non-managerial certificated position.
    - Require employers to receive approval recognizing demonstrable need for the exemption from the exclusive representative of members who would normally hold such a role.
    - Limiting the use of the exemption to one school year per certification, and when paired with removing the sunset date, prohibiting a returned member from utilizing the exemption more than one time.

- Adjust, do not eliminate, the compensation cap. A complete elimination is more likely to spark pure pension double dipping by incentivizing *active* teachers to retiree to collect their pension and salary.
- Require employers to continue to make pension contributions to CalSTRS (both the employer contribution and the value of non-retired employee contribution) for the filled position.
- Target the exception only to retirees who agree to serve in at-risk/ at-promise districts, where critical needs are most pressing to get experienced teachers to schools and communities most in need and perhaps help excuse the stress on pension policy.
- Keep the 180-day rule. Districts can get an exemption for critical needs but the rule should stay for critical pension policy purposes.

2. Need for this bill?

According to the author:

"California is facing a devastating teacher short-age, exacerbated by the COVID-19 pandemic and the Great Resignation. The California Commission on Teacher Credentialing (CTC) reports over 10,000 teacher vacancies across California during the 2021–22 school year. CalSTRS reports that teacher retirements in-creased by 26 percent in 2020. There are

not enough individuals entering the teaching profession to counteract the number of teachers leaving the workforce. Additionally, teacher demand is increasing. According to the Learning Policy Institute, in order to ensure a successful Transitional Kindergarten (TK) rollout, between 11.9K and 15.6K additional lead teachers, and between 16K and 19.7K assistant TK teachers are needed by 2025–26. This bill seeks to address the short term issue of filling critical positions, as well as building out a pipeline to build up our teacher workforce."

3. Senate Labor, Public Employment and Retirement Committee Amendments

In addition to Senate Education Committee amendments described in Section 4. below (which the author agreed to take when that committee heard the bill), SLPER Committee recommends the following amendments to address concerns from this committee and from key stakeholders as discussed above:

- Substantive amendments as described above in Section 1. Background under *Committee Concerns*.

- Technical amendments recommended by CalSTRS.

- A technical amendment to correct the citation to the proper referent in ED § 24214.5 (b)(3)…
    - (3) That the member is not ineligible for application of this subdivision pursuant to **paragraph (3) of** subdivision ***(c).*** ~~(d).~~

- An amendment to clarify the application of Government Code § 7522.56 (h) which exempts CalSTRS members *who are subject to* ED § 24214 (CalSTRS Compensation Limitation) or ED § 24214.5 (the 180-day Rule) from PEPRA's post-retirement work rules.

  Since this bill creates a new ED § 24214.1 to exempt retired educators from the sections referenced in GC § 7522.56 (h) (cf. exempting within §24214), it is unclear whether the retired educators are subject to those sections. If not, then one could argue they become subject to PEPRA's post-retirement work rules.

4. Senate Education Committee Amendments

As currently written, this bill exempts 1,000 Cal Grant applicants from demonstrating financial need if the applicant files a statement of intent with the California Student Aid Commission stating that the applicant agrees to enroll in an approved teacher preparation program after completing their baccalaureate degree. Education Committee staff noted that only requiring a statement of intent to enroll in a teacher preparation program gives little assurances that the teacher pipeline will increase. The author accepted the following amendment in the Senate Committee on Education which, due to time constraints, will be taken in this Committee:

- Specify that a Cal Grant recipient (pursuant to the bill's provisions) who does not enroll in a teacher preparation program within one academic year of earning their baccalaureate degree shall agree to repay the state the total Cal Grant funds received.

5. Proponent Arguments

According to the sponsor:

"These provisions will enable LEAs to quickly and efficiently fill vacant positions with experienced and qualified educators, thereby ensuring that our students have access to the resources they need to thrive. The bill is consistent with previous efforts that provided greater flexibility for CalSTRS retired members to assist with pressing staffing shortages and have proven to be effective tools in addressing these shortages in the past."

6. Opponent Arguments:

None received

7. Dual Referral:

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

8. Prior Legislation:

AB 1877 (Fong, 2022) would have exempted retired teachers who return to the classroom to teach from the postretirement compensation limit under the Teachers' Retirement Law (TRL), administered by the California State Teachers' Retirement System (CalSTRS), among other provisions. The bill died in the Assembly Public Employment and Retirement Committee.

SUPPORT

California Superintendent of Public Instruction (Sponsor)
Association of California School Administrators
California Association of School Business Officials
California Association of Suburban School Districts
California Charter Schools Association
California School Boards Association
Central Valley Education Coalition
Los Angeles Unified School District
Orange County Department of Education
Riverside County Office of Education
San Diego Unified School District

OPPOSITION

None received

-- END --

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

Bill No:	SB 526	**Hearing Date:**	April 26, 2023
Author:	Limón		
Version:	February 14, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Department of Industrial Relations: domestic violence prevention

KEY ISSUE

Should the Legislature require that the Department of Industrial Relations develop and prepare a poster on domestic violence prevention that employers may download from the department's website and display in their workplace?

ANALYSIS

Existing law:

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

2) Establishes the Department of Industrial Relations (DIR), within the Labor and Workforce Development Agency, 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 et seq.)

This bill:

1) Requires the Department of Industrial Relations to develop and prepare a poster on domestic violence prevention that employers ***may*** display in their workplace.

2) Requires the poster to include, at a minimum, the telephone number for the National Domestic Violence Hotline: 1-800-799-7233.

3) Requires DIR to make the poster at least 8.5 by 11 inches in size and use at least 12-point type font as well as making the poster available to employers for download through the department's internet website.

4) Authorizes DIR to develop the content and design for the poster in consultation with the Department of Justice, so as to adequately fulfill the purpose of providing information about domestic violence prevention.

COMMENTS

1. Background: Workplace Postings

In California, all employers must meet workplace posting obligations. Workplace postings are usually available at no cost from the requiring agency. The Department of Industrial Relations requires employers to post information related to wages, hours and working conditions in an area frequented by employees where it may be easily read during the workday. Additional posting requirements apply to some workplaces.

2. Need for this bill?

According to the author, the CDC reports that, "34.9 % of California women and 31.1% of California men experience intimate partner physical violence, intimate partner sexual violence and/or intimate partner stalking in their lifetimes. In 2019, 47% of women murdered in the state were caused by intimate partner violence. Some victims of domestic violence don't know where to go to seek resources, and their calls, texts, and internet history is often monitored by their abuser. The work place is often one of the few places the victim has away from their abuser.

This bill asks the Department of Labor and Industrial Relations to develop a poster for workplaces that will include the phone number for the national domestic violence hotline that can be a resource for victims of domestic violence. This poster will be available for employers to put up in breakrooms and offices but it is not a required posting."

3. Proponent Arguments:

According to the sponsors of the measure, Domestic Violence Solutions for Santa Barbara County, "On average, nearly 20 people per minute are physically abused by an intimate partner in the United States. During one year, this equates to nearly 10 million people. In fact intimate partner violence accounts for 15% of all violent crime in this country. The prevalence of domestic violence has negative impacts on all parts of our society, including in the workplace. Survivors can be distracted at work, miss work, arrive late or leave early, and be more likely to leave the job. 54% of employers have reported that domestic abuse caused the quality of the employee's work to suffer and 56% said it led to absenteeism.

SB 526 will ensure that employees have information readily available to them about how they can address the impacts an abusive relationship is having on their lives. By using the workplace poster system already in place, we can easily provide national and local contact information for domestic violence services directly to employees. This will potentially limit the negative impacts on the workplace that domestic violence can bring, and help increase productivity for California's employers.

California will also be joining a number of other state's that have already created domestic violence posters to be placed in the workplace, including Washington State. These states have already seen the benefit of this easy solution, and it is time that California join them in this endeavor."

4. Opponent Arguments:

None received

5. Staff Comment:

The bill requires the Department of Industrial Relations to develop and prepare a poster on domestic violence prevention that employers ***may*** display in their workplace. Although this poster is not mandatory, it would contain important information that a victim of domestic violence may find helpful if they can understand it. Existing posting requirements regarding human trafficking are required to be printed in English, Spanish, and in one other language that is the most widely spoken language in the county where the establishment is located and for which translation is mandated by the federal Voting Rights Act (Civil Code Section 52.6)

The author may wish to consider requiring that DIR make this poster available in other languages in addition to English. Because the bill is only permissive, committee staff recommends the following language to require that DIR make the notice available in English, Spanish and other languages spoken by a substantial number of the population.

Amendment:

The department shall make the notice available in English, Spanish, and any other non-English languages spoken by a substantial number of the public served by the department, pursuant to the Dymally-Alatorre Bilingual Services Act, Government Code Sections 7290-7299.8.

6. Prior/Related Legislation:

SB 1193 (Steinberg, Chapter 515, Statutes of 2012) requires specified businesses and other establishments to post a notice informing the public and victims of human trafficking of telephone hotline numbers to seek help or report unlawful activity. Additional requirements were added with the enactment of SB 225 (Stern, Chapter 565, Statues of 2017) and AB 260 (Santiago, Chapter 547, Statues of 2017). SB 225 requires the model notice to provide a specified number that victims can text for services and support, while AB 260 added hotels, motels, and bed and breakfast inns to the list of specified businesses required to post the model notice.

SUPPORT

Domestic Violence Solutions for Santa Barbara County (Sponsor)

OPPOSITION

None received

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

Bill No:	SB 534	**Hearing Date:**	April 26, 2023
Author:	Padilla		
Version:	March 22, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Equitable Access to Job Opportunity Pilot Program

KEY ISSUE

Should the Legislature establish a pilot program to require the California Workforce Development Board (WDB) and the Governor's Office of Planning and Research (OPR) to provide individuals without college degrees in rural and low-income communities with financial aid for workforce development training and education in key industries?

ANALYSIS

Existing law:

1) Creates the WDB 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)

2) Establishes apprenticeship 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. (Labor Code §3070-3098)

3) Establishes preapprenticeship programs and charges DAS with developing a process to approve preapprenticeship programs and verify partnership with an apprenticeship program. (Labor Code §3100)

4) Creates the Green Collar Jobs Act of 2008 and charges the WDB 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.)

5) 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.)

6) Requires any report submitted to the legislature be submitted as a printed copy to the Secretary of the Senate and Legislative Counsel and an electronic copy to the Chief Clerk of

the Assembly. The report shall also be posted on the submitting agency's website. (Government Code §9795)

This bill:

1) Establishes the Equitable Access to Job Opportunity Pilot Program (Program) to provide individuals without postsecondary education degrees from rural or low-income communities with financial aid that covers the full cost of attendance in any workforce development training and education needed to gain employment in key industries, including tuition and fees, housing, and books.

2) Requires the Program to be operative from January 1, 2024, to January 1, 2025.

3) Requires WDB and OPR to identify key industries and develop partnerships, pathways, and opportunities to ensure local development of those industries by working with local boards, employers, unions, and other relevant local stakeholders. The identification of key industries shall be based on goals established in California, including, but not limited to, climate change goals, renewable energy production goals, recycling goals, workforce development and educational attainment goals, as well ensuring the delivery of health care.

4) Requires WDB and OPR to do all of the following.

   a) Provide wraparound services including, but not limited to, job or interview preparation, childcare, housing, health care, transportation, and other nonwage benefits.

   b) Determine eligibility for individuals participating in the Program, and supporting individuals in accessing benefits.

   c) Work with local stakeholders, including, but not limited to, local boards, employers, unions, and community-based organizations, in securing job opportunities and building pathways and partnerships to secure and create those opportunities.

   d) Report to the Legislature on the effectiveness of the Program, including how successful the Program is at recruiting participants from targeted populations, integrating the Program within local jurisdictions, providing pathways and opportunities for employment, and effectiveness at utilizing existing resources and programming.

   e) Use existing resources to help meet the purposes of the Program, subject to the availability of funding.

5) Repeals the provisions of this bill on January 1, 2027.

6) Makes Legislative findings and declarations, including a finding that enacting a program in California similar to the GI Bill to address historic underinvestment in sectors and regions of our workforce in exchange for public service will provide economic mobility for all Californians and ensure every region of our state grows competitively.

COMMENTS

1. Background:

The federal Workforce Investment Act (WIA), later replaced by WIOA in 2014, was created to increase access to and opportunities for the employment, education, training, and support services workers need to succeed in the labor market. The CWDB was created to assist the Governor in coordinating with federal, state, and local entities to administer workforce training and education programs. Local workforce development boards bring together employers, community leaders, labor, education, policymakers, and the public to facilitate dialogue and respond to local workforce needs at the regional level. There are 45 local boards within the 49 Local Workforce Development Areas throughout California, each tasked with ensuring those seeking work can access job placement and training services.

In 2019, Governor Newsom established the Future of Work Commission (Commission) to "study, understand, analyze, and make recommendations regarding the kinds of jobs Californians could have in the decades to come." The Commission's final report recommended support for efforts that promote job quality, citing a 2019 Gallup Poll stating fewer than half of California workers consider themselves in a "good job." The report found a "growing divide in economic advancement between coastal and inland counties, and between rural and urban communities, leads to inequality in income and employment between geographic regions in California. Just five large California counties make up more than two-thirds of California's economy in terms of economic output and employment."

2. Need for this bill?

According to the author, "California's current approach to meeting our ambitious goals is unsustainable. Funding of workforce development programs remains inaccessible to rural, low-income, and underinvested communities across the state. California will need significant additions to a trained and skilled workforce in order to meet our goals. But, these projects must be made available to all of California, not a privileged few communities. At the same time that rural communities face challenges to access the few quality jobs available, many industries in these same areas are failing. Modeled after the GI Bill, SB 534 would create a pilot program focused on providing access to workforce development and wrap around services in exchange for helping the state meet our ambitious goals and driving local economic development. The bill would identify emerging industries souring economic development and the creation of quality jobs in rural regions of our state. California's focus on the supply side of the labor market means our workforce will lead in emerging industries."

3. Committee Discussion:

This bill specifies the Program shall be one year long, operative between January 1, 2024, and January 1, 2025. This would provide WDB and OPR with no time to develop the Program once the bill goes into effect on January 1, 2024. The committee suggests amending the bill to provide a longer onramp to allow the agencies sufficient time to develop the Program and conduct the appropriate outreach. The committee recommends one year to develop the Program, which could then get underway January 1, 2025 and operate until January 1, 2026. The study and subsequent inoperative date required by the bill would then need to be adjusted to a later due date. The committee suggests moving those dates one year to January 1, 2027, instead of January 1, 2026, for the due date and January 1, 2028, as the inoperative date.

Proposed Amendments

SEC. 2. Division 11 (commencing with Section 19000) is added to the Unemployment Insurance Code, to read:
DIVISION 11. Equitable Access to Job Opportunity Act

19000.
(a) The Equitable Access to Job Opportunity Pilot Program is hereby established as a pilot program to provide individuals without postsecondary education degrees from rural or low-income communities with financial aid that covers the full cost of attendance in any workforce development training and education needed to gain employment in key industries, including tuition and fees, housing, and books.
(b) The pilot program shall be operative from January 1, ~~2024~~*2025*, to January 1, ~~2025~~*2026*, inclusive.

19006.
(a) On or before January 1, ~~2026~~*2027*, the board and the office shall report to the Legislature on the effectiveness of the program, including how successful the program is at recruiting participants from targeted populations, integrating the program within local jurisdictions, providing pathways and opportunities for employment, and effectiveness at utilizing existing resources and programming.
(b) The report shall be submitted to the Legislature in compliance with Section 9795.

19007.
This division shall remain in effect only until January 1, ~~2027~~*2028*, and as of that date is repealed.

4. Proponent Arguments:

Alianza Coachella Valley, the Cities of El Centro and Imperial, Imperial Valley Equity & Justice Coalition, Lift to Rise, and Los Amigos de la Comunidad state, "California is a tale of two economies. A growing percentage of communities across California are economically stranded. Rural and inland communities tend to have higher unemployment, lower educational attainment, and more families struggling to put food on the table. According to the Little Hoover Commission, "California's inland and more rural regions have less exposure to the knowledge and technology industries that have powered California's economy over the past decades. Their economies are less diversified than those of coastal regions and many currently lack the economic drivers to create quality jobs at scale for residents. Inland and rural regions are at once most impacted by climate change and environmental pollution and most vulnerable to potential job losses from measures designed to address climate change and improve environmental quality." The Equitable Access to Job Opportunity Pilot Program established by SB 534 represents an opportunity to address underinvestment in rural and low-income communities, the need to identify emerging industries within these communities, and the need to build a workforce that supports both local economic development and helps the state meet our ambitious goals."

5. Opponent Arguments:

None received

6. Prior Legislation:

SB 822 (Durazo, 2023) would establish the Interagency High Road Team (Team) consisting of the LWDA, the Government Operations Agency (including the Department of General Services), and the Governor's Office of Business and Economic Development and charges the Team with creating high road evaluation metrics, among other things.

AB 2696 (Bass - Chapter 396, Statutes of 2010) set forth additional reporting and consulting duties for the Green Collar Jobs Council.

AB 3018 (Nunez - Chapter 312, Statutes of 2008) established the Green Collar Jobs Council to perform specified tasks related to addressing the workforce needs that accompany California's growing green economy.

SUPPORT

Alianza Coachella Valley
California Teamsters Public Affairs Council
City of El Centro
City of Imperial
Imperial Valley Equity and Justice Coalition
Lift to Rise
Los Amigos De LA Comunidad, Inc.

OPPOSITION

None received

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

Bill No:	SB 685	**Hearing Date:**	April 26, 2023
Author:	Hurtado		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Apprenticeship Innovation Funding Program: AgTech

KEY ISSUE

Should the Legislature require 20 percent of Apprenticeship Innovation Funding Program funds to be allocated for transitioning farmworkers to agriculture technology or other related industries?

ANALYSIS

Existing law:

1) Requires the Division of Apprenticeship Standards (DAS), upon appropriation of funds by the Legislature, to establish and administer the Apprenticeship Innovation Funding Program to provide grants, reimbursements, or funding through other appropriate mechanisms to an apprenticeship program for the support of apprenticeship programs and training of apprentices. (Labor Code §3110)

2) Creates, within DAS, the Interagency Advisory Committee on Apprenticeship (IACA), which must provide advice and guidance to the Administrator of Apprenticeship and Chief of the Division of Apprenticeship Standards on the development and administration of standards governing preapprenticeship, certification, and on-the-job training and retraining programs outside the building and construction trade and firefighter occupations. (Labor Code §3071.5)

3) Provides IACA must have the following designees as ex officio members:
   a) The Secretary of Labor and Workforce Development.
   b) The Executive Director of the California Workforce Development Board.
   c) The Director of Industrial Relations.
   d) The Executive Director of the Employment Training Panel, Superintendent of Public Instruction.
   e) The Chancellor of the California Community Colleges.
   f) The Director of Rehabilitation.
   g) The Executive Director of the State Council on Developmental Disabilities.
   h) The State Public Health Officer.
   i) The Director of Consumer Affairs. (Labor Code §3071.5)

This bill:

1) Requires DAS, during the first five years of administering grant funds under the Program, to prioritize a minimum of 20 percent of funds for farmworkers transitioning to AgTech or a related career.

2) Requires those funds to be provided only to reimburse wage loss experienced by farmworkers while enrolled in a farmworker related training program.

3) Defines "AgTech" for the purpose of the Program to mean the use of technology to improve the efficiency, profitability, or sustainability of agriculture.

COMMENTS

1. Background

The Program was created last year to fund new and innovative apprenticeship programs, defined as apprenticeships associated with IACA, and aims to support IACA apprenticeship program sponsors to sustain and scale their programs and train apprentices. The intent of the funding for the Program is to support both new and existing IACA apprenticeship programs to grow and scale to meet the needs of more employers and create more earn and learn pathways for job seekers. The State has allocated $175 million over three years to support ongoing costs of these programs and classroom training, with $55 million specifically allocated for FY 2022-23. IACA apprenticeships focus on the non-building trade apprenticeship opportunities, such as those in the health care sector.

Many agricultural technologies replace the need for human labor. Adoption of these technologies in the food industry will translate into loss of employment for vulnerable populations. Because the food sector as a whole employs about ten percent[1] of the total workforce, this is not an insignificant impact to families and the overall economy. The Employment Development Department Labor Market Division estimates an annual average of 420,800 agricultural workers were employed in California last year. The Brookings Institution recommends policymakers should do two things to support these displaced workers: form partnerships with private sector employers to facilitate targeted retraining that allows the workers to reenter the labor force quickly and with a stronger set of skills, and establish robust income and other social insurance support to allow workers to effectively retrain.

2. Need for the Bill?

According to the author, "Senate Bill 685 seeks to establish a pilot program within California's Apprenticeship Innovation Funding Program specifically targeting farmworkers impacted by flooding, drought, Covid-19, and the automation of agricultural jobs… The California Institute of Rural Studies (CIRS) published a report showing over 100,000 agricultural jobs were lost due to COVID-19's economic and health impacts on the state's farmworker workforce. Nearly half of all farmworkers experienced decreased work time and loss of income during the COVID-19 pandemic (CIRS). Agricultural land, due to drought and climate-change increased idled land in 2022 by 750,000 acres (PPIC). The growth in idled land means the loss of thousands of farmworker jobs throughout the state.

[1] https://www.brookings.edu/blog/up-front/2020/11/23/automation-from-farm-to-table-technologys-impact-on-the-food-industry/

3. Committee Discussion

The purpose of the existing Program is to fund IACA related apprenticeships for a period of three years. This bill proposes to encumber 20 percent of the annual funding for five years without clear guidance regarding eligibility requirements. As the bill is currently drafted, it does not create a pilot program, rather it proposes to carve out funding to supplement lost wages for agricultural workers who receive training *only in a farmworker related training program*. It is unclear how the funding would be administered.

The committee may wish to consider whether this bill fulfills the intent the author has expressed to assist farmworkers and whether it is consistent with the overall goal of the Program to train and upskill workers while providing wages.

3. Proponent Arguments

According to the California Farmworker Foundation, "SB 685 seeks to establish a pilot program within the AIF specifically targeting farmworkers affected by drought, Covid-19 and now record flooding throughout the state. SB 685 will set aside 20% of the budgeted AIF to transition farmworkers to AgTech or a new career path.

Ninety percent of California farmworkers were born in Mexico, seven out of ten have just one employer, most farmworkers are married parents, and few migrate between California's agricultural regions according to the 2018 Department of Labor National Agricultural Workers Survey. The average California farmworker works 36 weeks annually, earning $20,500 per year; About one-third received employer-provided health insurance. Half of those eligible rely on at least one public program, such as Medi-Cal or Food Stamps, but 60 percent of the state's farmworkers lack work authorization and cannot receive any government safety net benefits.

Agricultural land, due to drought and climate-change increased idled land in 2022 by 750,000 acres. The growth in idled land means the loss of thousands of farmworker jobs throughout the state. Farmworkers and Ag tech innovation are not mutually exclusive. Training farmworkers with new technology and combining the expertise these workers have of crops, soil and harvesting techniques is a way to bring new efficiencies forward and retain this vital workforce.

Significant resources, deservedly so, have been invested into healthcare jobs as well as those eventually transitioning out of oil and gas sectors. Farmworkers deserve the same prioritization and SB 685 sets aside funding to ensure they receive the training and wages needed to transition into ag tech or a new career field. We believe this legislation is needed to bring equity to some of our most vulnerable workers and provide new career opportunities to them and their families."

4. Opponent Arguments:

None received

4. Prior Legislation:

SB 191 (Committee on Budget and Fiscal Review - Chapter 67, Statutes of 2022) among other things, allocated $175 million over three years to support ongoing costs of these programs.

SUPPORT

California Farmworker Foundation

OPPOSITION

None received

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

Bill No:	SB 700	**Hearing Date:**	April 26, 2023
Author:	Bradford		
Version:	April 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Employment discrimination: cannabis use

KEY ISSUE

Should the Legislature make it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis?

ANALYSIS

Existing law:

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

2) Provides that Health & Safety Code §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. (Health and Safety Code §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 §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. (Government Code §12926)

5) Beginning January 1, 2024, 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 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. (Government Code §12954)

6) Provides that Government Code §12954 does not:

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 affects 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. (Government Code §12954(b)-(e))

This bill:

1) Makes it unlawful for an employer to request information from an applicant for employment relating to the applicant's prior use of cannabis.

2) Provides that the preceding is subject to the existing limitations of the FEHA prohibition on discrimination on the basis of cannabis use.

3) Provides that this bill 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.

COMMENTS

1. Need for this bill?

In March 2021, the State Personnel Board (SPB) heard a case regarding the dismissal of a CalTrans maintenance worker for testing positive for THC upon his return to duty after a leave of absence. In upholding the Administrative Law Judge's decision to revoke his termination, the SPB ruled that a positive urinalysis test for marijuana, on its own, is not grounds for dismissal. In this case, there was no evidence that the worker was "under the influence of marijuana when he reported for duty or on standby for duty or that he possessed

or used marijuana while on duty or on standby." The SPB found that the test had limited probative value because it could only show marijuana use at some point in time prior to the worker reporting to work. Furthermore, the fact that he was in a position designated as "safety sensitive" was not dispositive because such designation only attaches to a state worker when they are "on duty or on standby for duty." Thus, a positive drug test for off the job and past use of marijuana cannot be a basis for proving employee impairment.

Recreational use of cannabis has been legal in California since 2016 when a majority of voters approved Proposition 64. Up until January of this year, California employers could still lawfully refuse to hire someone because they use cannabis, and workers could still be disciplined or fired for cannabis use, even if that use took place off of the job, away from the worksite, and did not jeopardize safety or otherwise impair the worker's performance.

According to the author, "Existing law makes it unlawful for employers to discriminate against workers in hiring or employment based on their "use of cannabis off the job and away from the workplace," effective Jan 1, 2024. However, some employers, in particular law enforcement agencies, have a policy of asking prospective employees about their prior use of cannabis.

Law enforcement agencies throughout the state employ zero tolerance policies on cannabis use and continue to ask applicants whether they have used cannabis recreationally prior to employment. This practice not only dissuades otherwise suitable candidates from applying for these positions, but also leads to situations in which individuals either respond dishonestly to this question, or people are denied from moving further in the application process for using cannabis in a legal and responsible capacity in accordance with the laws of this state.

SB 700 explicitly makes it unlawful for employers to "request information from an applicant for employment relating to the applicant's prior use of cannabis." SB 700 preserves other provisions in AB 2188, such as exemptions for employers subject to federal regulation or in the construction industry. It does nothing to change existing law pertaining to testing for cannabis and cannabis use on the job."

2. Proponent Arguments

According to California Norml, "It has been brought to our attention that some employers have a policy of asking prospective employees about their prior use of cannabis. This practice is clearly inconsistent with the intent of AB 2188, since prior use of cannabis is irrelevant to a worker's present use of cannabis on the job or in the workplace.

SB 700 addresses this problem by explicitly making it unlawful for employers to "request information from an applicant for employment relating to the applicant's prior use of cannabis." SB 700 preserves other provisions in AB 2118, such as exemptions for employers subject to federal regulation or in the construction industry. It is already illegal in California for employers to ask job applicants about their prior use of alcohol and other legal drugs. SB 700 rightly extends this to cannabis."

3. Opponent Arguments:

None received

4. Double Referral

This bill was first referred to the Senate Committee on Judiciary and passed 7-2.

5. Prior Legislation:

AB 2188 (Quirk – Chapter 392, Statutes of 2022) provided, with certain exceptions, that it is unlawful 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 nonpsychoactive 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 nonpsychoactive cannabis metabolites in their urine, hair, or bodily fluids. *This bill died in the Assembly Committee on Labor and Employment.*

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

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

AB 266 (Bonta - Chapter 689, Statutes of 2015) established a comprehensive licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution, and sale of medical cannabis.

AB 2279 (Leno, 2008) would have prohibited employers from discriminating against qualified medical cannabis patients employed in non safety-sensitive positions. *In his veto message, Governor Schwarzenegger wrote: "[…] I am concerned with interference in employment decisions as they relate to cannabis use. Employment protection was not a goal of the initiative as passed by voters in 1996."*

SB 420 (Vasconcellos - Chapter 875, Statutes of 2003) enacted the Medical Cannabis Program which provided for a voluntary medical cannabis patient card that could be used to verify that the patient or their caregiver had state authorization to cultivate, possess, transport, or use medicinal cannabis.

SUPPORT

California Norml

OPPOSITION

None received

-- END --

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

Bill No:	SB 703	**Hearing Date:**	April 26, 2023
Author:	Niello		
Version:	February 16, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Employment: work hours: flexible work schedules

KEY ISSUE

Should the Legislature exempt overtime laws applicable to private employers for employees to work a 10 hour per day/40 hour per week schedule?

ANALYSIS

Existing law:

1) Provides that eight hours of labor constitutes a day's work and requires an employer to compensate an employee at the rate of no less than one and one-half times the regular rate of pay for any work in excess of:

    a. Eight hours in one workday;

    b. Forty hours in any one workweek;

    c. The first eight hours worked on the seventh day of work in any one workweek. (Labor Code §510)

2) Requires an employer to compensate an employee at the rate of no less than twice the regular rate of pay of an employee for any work in excess of:

    a. Twelve hours in one day at the rate of no less than twice the regular rate of pay for an employee;

    b. Eight hours on any seventh day of a workweek. (Labor Code §510)

3) Authorizes, upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation. (Labor Code §511)

4) Does not apply overtime compensation to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage. (Labor Code §514)

5) Prohibits, as specified, a workweek longer than forty hours unless an employee receives compensation at a rate not less than one and one-half times the employee's regular rate. (29 USC 207 (a))

This bill:

1) Authorizes an individual nonexempt employee to request an employee-selected flexible work schedule providing for workdays up to ten hours per day within a 40-hour workweek, and would allow an employer to implement this schedule without the obligation to pay overtime compensation for those additional hours in a workday, with the following exceptions:

    a. The employer shall pay overtime at one and one-half times the employee's regular rate of pay for all hours worked over 40 hours in a workweek or over 10 hours in a workday, whichever is the greater number of hours.

    b. All work performed in excess of 12 hours per workday and in excess of eight hours on a fifth, sixth, or seventh day in the workweek shall be paid at double the employee's regular rate of pay.

2) Provides that an employer may inform its employees that it is willing to consider an employee request to work an employee-selected flexible work schedule, but shall not induce a request by promising an employment benefit or threatening an employment detriment.

3) Provides that either party may discontinue the employee-selected flexible work schedule at any time by giving written notice to the other party. The request would be effective the first day of the next pay period or the fifth day after notice is given if there are fewer than five days before the start of the next pay period, unless otherwise agreed to by the employer and the employee.

4) Specifies the provisions of this bill would not apply to any employee covered by a valid collective bargaining agreement or employed by the state, a city, county, city and county, district, municipality, or other public, quasi-public, municipal corporation, or any political subdivision of the state.

5) Requires the Division of Labor Standards Enforcement (DLSE) to enforce the provisions of this bill and adopt regulations.

6) Specifies the provisions of this bill shall prevail over any inconsistent provisions in any wage order of the Industrial Welfare Commission (IWC).

COMMENTS

1. Background

The Eight Hour Workday and 40 Hour Workweek

The IWC was established by the Legislature in 1913 to regulate minimum wages, maximum hours of work, and standards for working conditions for women and minors. In 1916, the IWC issued its first wage order, setting the minimum wage rate at 16 cents per hour for the fruit and vegetable canning industry, with pay of one and a quarter times the normal rate after ten hours, a limit of 72 hours per week, and improved sanitary conditions. A few years later

the IWC reduced the maximum hours to eight hours a day and 48 hours a week. By the sixties, the IWC faced ongoing legal challenges to its orders, especially over the issue of regulations only for women. In 1973, the Legislature extended the IWC's powers to include all employees. During the eighties and nineties the IWC faced conflicting issues over standard work weeks and daily overtime. In 1997, after the IWC changed the order requiring overtime pay after eight hours in a day to overtime after 40 hours in one week, the Legislature revoked its funding.

In 1999, the legislature passed and Governor Davis signed AB 60 (Knox - Chapter 134, Statutes of 1999), which established a framework for the payment of daily overtime compensation. That framework included time and a half pay after eight hours of work per day, personal time off for a personal obligation of an employee which may be made up during a workweek without payment of overtime compensation, and the adoption through an employee election of an alternative work week schedule or menu of schedules offered by an employer. That year, the Governor reinstated the IWC, which remained in operation until July 2004, when its funding was again eliminated from the state budget. Though the IWC is currently not in operation, the DLSE continues to enforce the provisions of the wages orders issued by the IWC.

Flexible Work Schedules Already Authorized

AB 60 included provisions for flexible work schedules, providing for the adoption of alternative workweek schedules following an employee election. The alternative workweek schedule authorizes employees to work no more than ten hours per day within a 40 hour workweek without receiving overtime. Such an alternative schedule must be adopted in a secret ballot election by at least two-thirds of the affected employees. Labor Code Section 511(a) also provides that, "The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose." Additionally, AB 60 allowed employees to take off time for a personal obligation and make up that time during the same workweek without overtime. Labor Code Section 513 provides that, if an employer approves a written request, an employee may makeup work time during the same workweek without incurring daily overtime, except for hours in excess of 11 in one workday.

Section 3(C)(1) of the IWC orders, enforced by DLSE, state "If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another." Section 3(B)(1) of the orders provide that, "Nothing in this section shall prohibit an employer, at the request of the employee, from substituting one day of work for another day of the same length in the shift provided by the alternative workweek agreement on an occasional basis to meet the personal needs of the employee without the payment of overtime." Section 3(C)(2) of the orders also provide that the term "affected employees in the work unit" may include all employees in a readily identifiable work unit, such as a division, a department, a job classification, a shift, a separate physical location, or a recognized subdivision of any such work unit. A work unit may consist of an individual employee as long as the criteria for an identifiable work unit are met.

Recent Movement Around the 40 Hour Workweek

In 2015 and 2016, Iceland shifted approximately 2,500 municipal employees to 35 or 36 hour workweeks without a reduction in pay. A subsequent report[1] found that employee and manager physical and mental well-being improved while productivity both maintained and increased. As a result of this trial, 86 percent of Iceland's workforce has now either moved to working shorter hours or have had new mechanisms made available to them through which they can negotiate shorter hours in their workplace.

A 2022 trial in the UK involving 61 companies from diverse sectors and sizes had similar results. The report[2] found that workers' stress decreased on average, and most workers found it easier to balance work and caregiving commitments. The employers also realized benefits with the decreased rate of workers quitting during the trial and revenues generally remaining steady and increasing by 1.4 percent on average. By the end of the seven month trial, 92 percent of the companies said they would continue the policy, and 18 percent decided to make a permanent change.

2. Need for this bill?

According to the author, "Employees are seeking more flexibility and alternative work schedules as both families and businesses seek a return to normal from Covid-19 impacts on our day to day lives. Workflex (the policy or ability to work four 10 hour days in lieu of five 8 hour days) is being requested more and more by today's employees but California's existing law makes is onerous to do so.

Existing law allows for state employees to have a variety of flexible work schedules, including the "4/10/40" in which the employee works four 10 hour shifts with one scheduled day off per week per the state's human resource manual (Calhr).

Current law, however, requires non-exempt employees to be paid overtime in the private sector once they exceed 8 hours of work in a day. Non-exempt employees are workers who must be paid on a wage and hourly basis because their job duties do not fall within an overtime exemption. While there is an existing process for some flexibility, it is onerous and burdensome, requiring an election of all employees when it may be only a singular employee wishing for an alternate workweek. Furthermore, it is generally employer-not employee-initiated, while SB 703 streamlines a process that is beneficial to an individual employee and employer.

SB 703, The Workplace Flexibility Act, seeks to empower individuals who want more flexibility in their schedule by allowing a non-exempt employee to request a flexible work schedule with workdays of up to 10 hours per day within a 40-hour workweek, in lieu of overtime compensation for the two additional hours worked each day.

This proposal would also result in both traffic and environmental benefits for our state by reducing commuters on the road. It can also promote parent involvement in their children's lives by allowing employees the opportunity to meet their work and life responsibilities and

[1] ICELAND_4DW.pdf (autonomy.work)
[2] The-results-are-in-The-UKs-four-day-week-pilot.pdf (autonomy.work)

needs. Furthermore, it provides parity with existing law that allows public employees throughout our state this type of flexibility."

2. Proponent Arguments:

According the a coalition letter, "California is one of the only states that requires employers to pay daily overtime after eight hours of work in addition to weekly overtime after 40 hours of work. Even other states that impose daily overtime requirements allow the employer and employee to essentially waive the daily eight-hour overtime requirement through a written agreement. California, however, provides no such common-sense alternative. Rather, California requires employers to navigate through a multi-step process to have employees elect an alternative workweek schedule that, once adopted, must be "regularly" scheduled. This process is filled with potential traps that could lead to costly litigation, as one misstep may render the entire alternative workweek schedule invalid and leave the employer on the hook for claims of unpaid overtime wages.

Currently, there are 44,837 reported alternative workweek schedules with the Division of Labor Standards Enforcement. According to the Employment Development Department, California has about 1.6 million employers. Therefore, about less than 3% of California employers utilize the alternative workweek schedule option. Further, more realistically, given that the information in the database is according to work unit instead of employer, it is likely that less than 1% of employers in California are utilizing this process.

Employees want flexibility in their work schedules. In a recent poll conducted by the California Chamber of Commerce, 88% of voters agreed (49% of them strongly) that the state's overtime laws should be changed to make it easier for employees to work alternative schedules, such as four 10-hour days. A survey by the Society for Human Resource Management revealed that 91% of Human Resources professionals agree that flexible work arrangements positively influence employee engagement, job satisfaction, and retention. According to Corporate Voices for Working Families and WFD Consulting, an in-depth study of five organizations that allow their non-exempt employees to have flexibility in their schedules found that employee commitment was 55% higher and burnout and stress decreased by 57%."

3. Opponent Arguments:

California Labor Federation states "The eight-hour day was established in California in 1868. This right was won through the struggle and strikes of working people demanding "8 hours for work, 8 hours for rest, 8 hours for what we will." Essentially it was about ensuring that the working class was not forced to toil their lives away without adequate rest or the opportunity to enjoy life.

This right remained on the books until then Governor Pete Wilson used the Industrial Welfare Commission to roll back daily overtime in 1997. After Gray Davis was elected, the Legislature restored the eight-hour day in AB 60 (Knox, 1999). AB 60 also provided additional forms of flexibility without compromising the essential protection of daily overtime.

Under existing law, there are numerous ways for employers to adopt alternate schedules and for workers to have flexibility. Any employer can schedule an alternate workweek election to allow the workers to vote to adopt an alternate schedule in lieu if the eight-hour day. This requires a two-thirds majority, but employers control every aspect of the election to make it easier to reach this threshold. They can determine which unit of workers can participate, which shifts to offer, and the number of workers per shift. They can even offer a menu of schedules to accommodate both business needs and worker obligations. As a result, tens of thousands of employers have successfully adopted these schedules. An alternate schedule can also be adopted pursuant to a collective bargaining agreement.

In addition to modified schedules, there is also a provision to accommodate a short-term need for flexibility. The Labor Code currently allows workers to request make-up time, meaning they leave early one day and work late the next without accruing overtime.

There is no conflict between preserving the sanctity of the eight-hour day and allowing for flexibility. Current law strikes that balance. This bill would instead make daily overtime waivable by an individual. The Labor Code disfavors individual waivers of rights due to the power imbalance at the workplace where workers can easily feel pressured to give up core protections like overtime pay to keep their job. That is why current law provides for an election process to protect workers from coercion to give up hard-won rights.

The eight-hour day remains one of the most important protections workers have won. It allows workers to go home to their families at the end of the day or to be paid a premium for missing that family time. It supports worker health and safety. It spreads work around by limiting how much any single individual can do, thereby creating jobs.

The proponents for this bill will claim it is about limiting cars on the road, reducing greenhouse gases, or allowing workers to commute less. All of those can be easily achieved through existing law by moving start and end times to avoid rush hour, adopting a menu of alternate scheduling options, or allowing remote work. None require workers to sacrifice the eight-hour day."

4. Prior Legislation:

SB 276 (Seyarto, 2023) would apply California labor law regulating overtime compensation to an individual currently employed by the Legislature. *This bill will be heard in the Senate Committee on Labor, Public Employment and Retirement on May 26, 2023.*

AB 2482 (Voepel, 2018) was substantively similar to this bill. *The bill failed passage in the Assembly Committee on Labor and Employment.*

AB 1173 (Harper) of 2017 would have established an overtime exemption for an employee-selected holiday season flexible work schedule. This bill failed passage in the Assembly Committee on Labor and Employment.

AB 1038 (Jones) of 2015 was substantively similar to this bill. *The bill failed passage in the Assembly Committee on Labor and Employment.*

AB 2448 (Jones) of 2014 was substantively similar to this bill. *The bill failed passage in the Assembly Committee on Labor and Employment.*

AB 907 (Conway) of 2014 was substantively similar to this bill. *The bill failed passage in the Assembly Committee on Labor and Employment.*

SB 607 (Berryhill) of 2013 was substantively similar to this bill. *The bill failed passage in the Senate Committee on Labor and Industrial Relations.*

AB 830 (Olsen) of 2011 was substantively similar to this bill. *The bill failed passage in the Assembly Committee on Labor and Employment.*

AB 60 (Knox – Chapter 134, Statutes of 1999) establishes a comprehensive framework for the payment of daily overtime compensation: 1) time and one-half pay after eight hours of daily work; 2) personal time off for a personal obligation of an employee which may be made up during a workweek without payment of overtime compensation within specified limits; and, 3) the adoption through an employee election of an alternative work week schedule or menu of schedules offered by an employer.

SUPPORT

Acclamation Insurance Management Services
Allied Managed Care
Anaheim Chamber of Commerce
Automotive Service Councils of California
Building Owners and Managers Association
California Association for Health Services At Home
California Association of Health Facilities
California Beer and Beverage Distributors
California Building Industry Association
California Business Properties Association
California Cattlemen's Association
California Chamber of Commerce
California Farm Bureau
California Landscape Contractor's Association
California League of Food Producers
California Lodging Industry Association
California New Car Dealers Association
California Restaurant Association
California State Council of Society of Human Resource Management
California Trucking Association
Carlsbad Chamber of Commerce
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Coalition of Small and Disabled Veteran Businesses
Commercial Real Estate Development Association, Naiop of California
Danville Area Chamber of Commerce
Family Business Association
Flasher Barricade Association

Fresno Chamber of Commerce
Gilroy Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater San Fernando Valley Chamber of Commerce
Half Moon Bay Coastside Chamber of Commerce
Hollywood Chamber of Commerce
Independent Lodging Industry Association.
Industry Business Council
LA Canada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Los Angeles Area Chamber of Commerce
Mammoth Lakes Chamber of Commerce
Manteca Chamber of Commerce
Mariposa County Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business
Oceanside Chamber of Commerce
Official Police Garage Association of Los Angeles
Orange County Business Council
Pacific Grove Chamber of Commerce
Palos Verdes Peninsula Chamber of Commerce
Plumbing-heating-cooling Contractors Association of California
Rancho Cordova Area Chamber of Commerce
Roseville Area Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
San Gabriel Valley Economic Partnership
San Rafael Chamber of Commerce
Santa Ana Chamber of Commerce
Santa Barbara South Coast Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santee Chamber of Commerce
Southwest California Legislative Council
Tri County Chamber Alliance
Valley Industry and Commerce Association (VICA)
West Ventura County Business Alliance
Western Electrical Contractors Association
Western United Diaries

OPPOSITION

California Labor Federation
California Nurses Association
California School Employees Association

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

Bill No:	SB 327	**Hearing Date:**	April 26, 2023
Author:	Laird		
Version:	February 7, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: State teachers' retirement: disability allowances and benefits

KEY ISSUE

Should the state reduce the timeframe that CalSTRS members may backdate a contingent, contemporaneous application for service retirement pending CalSTRS' determination of the member's disability retirement application from no earlier than January 1, 2014, to 180 calendar days prior to when CalSTRS receives the application?

Should the state reduce the timeframe that CalSTRS members may backdate a regular application for service retirement from no earlier than January 1, 2012, to 180 calendar days prior to when CalSTRS receives the application?

ANALYSIS

Existing law:

1) Permits an eligible CalSTRS member who applies for a disability allowance (Coverage A) or disability retirement (Coverage B) to apply contemporaneously to receive a *service* retirement allowance pending the determination of the disability application, as specified, and permits the member to indicate an earlier service retirement date contingent on CalSTRS' denial or cancelation of the disability application. (Education Code (ED) § 24201.5)

2) Prohibits the contingent service retirement's effective date from being earlier than the first day of the month CalSTRS' receives the member's disability application unless CalSTRS denies or cancels the disability application and the member indicated an earlier service retirement date on the application to use if CalSTRS denies or cancels the disability application. (ED § 24201.5 (a) (2) (B))

3) Permits the effective date of a contingent service retirement of a member who files a disability application on or after January 1, 2014, to be no earlier than January 1, 2014, if CalSTRS denies or cancels the disability application. (ED § 24201.5 (a) (2) (D))

4) Permits the service retirement date of a member who files an application for regular service retirement on or after January 1, 2012, to be no earlier than January 1, 2012. (ED § 24204 (c))

This bill:

1) Modifies the effective date of a service retirement of a member who files a disability retirement application that CalSTRS denies or cancels to no earlier than 180 calendar days prior to when CalSTRS receives the application for service retirement.

2) Modifies the effective date of a service retirement of a member who files a service retirement application to no earlier than 180 calendar days prior to when CalSTRS receives the application for service retirement.

3) Authorizes the CalSTRS board to determine a date based on when CalSTRS has the capacity to implement the changes made by this bill and requires CalSTRS to post the date on its website no later than January 1, 2026.

4) Makes the existing statutory provisions modified by this bill inoperative January 1, 2026, and the revised provisions operative January 1, 2026.

5) Rephrases provisions that require relevant application forms or information to be received at CalSTRS' headquarters to instead say they must be received by CalSTRS. Presumably, this clarifies that forms received electronically or at CalSTRS' field offices qualify.

COMMENTS

1. Need for this bill?

According to the author:

"Under existing law, CalSTRS members may backdate their service retirement or service retirement during evaluation of a disability application benefit effective dates to as early as January 1, 2012, or January 1, 2014, respectively. Between January 1, 2017, and January 1, 2022, 89% of members who backdated their service retirement requested a benefit effective date within six months of when their application was received. Only 2% of backdating members during the same timeframe selected a benefit effective date more than two years from when their application was received, with the longest any benefit was backdated being about 5.45 years."

"The flexibility of CalSTRS' service retirement benefit backdating is a significant outlier among other public pension plans in California and other states. Some members who have backdated their service retirement several months or years have found that the resulting large lump-sum payments have created significant issues with tax liability, retroactive Social Security offsets and qualification for other income-based non-CalSTRS benefits, including Medicare."

According to CalSTRS, significant backdating can also cause CalSTRS to pay out more than it should under the Defined Benefit Supplement (DBS) program. Members receive additional earnings credit under the DBS program (consisting of earnings that are not used in calculating the Defined Benefit program retirement allowance) while active that a retired member would not receive. However, if a member backdates their retirement application

they are able to retain those credits. This can result in large cash payouts that the member should not have received since they were technically retired during the credit accrual period.

2. Proponent Arguments

According to CalSTRS:

"This bill minimizes unintended consequences affecting tax liability and other income-based non-CalSTRS benefits for members who request significantly backdated service retirement benefits, avoids reputational risk associated with large pension payouts, and prevents potentially paying out more based on Defined Benefit Supplement (DBS) additional earnings credit (AECs) than the pension administration system otherwise would have."

3. Opponent Arguments:

None received

4. Prior Legislation:

AB 1379 (Assembly PERS&S Committee), Chapter 558, Statutes of 2013, among other changes, allowed members applying for service retirement during the evaluation of a disability application to backdate the effective date of their service retirement to as early as January 1, 2014.

SB 349 (McLeod), Chapter 703, Statutes of 2011, among other changes, allowed members backdate the effective date of their service retirement to as early as January 1, 2012.

SUPPORT

California State Teachers' Retirement System (Sponsor)

OPPOSITION

None received

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

Bill No:	SB 830	**Hearing Date:**	April 26, 2023
Author:	Smallwood-Cuevas		
Version:	March 27, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Public works

KEY ISSUE

Should custom fabrication of sheet metal ducts or similar sheet metal products for heating, ventilation, and air conditioning systems produced offsite and solely and specifically designed and engineered for installation in a particular public works project be subject to the payment of prevailing wages?

ANALYSIS

Existing law:

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

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

3) Specifies that for prevailing wage purposes, “construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. [Labor Code §1720(a)]

4) Defines “paid for in whole or in part out of public funds” as, among other things, “Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations normally required in the execution of a contract that are paid, reduced, charged at less than fair market value, waived or forgiven.” [Labor Code §1720(b)]

5) Requires that the applicable general prevailing rate of per diem wages be determined by the Director of the Department of Industrial Relations (DIR) for each *locality in which the public work is to be performed* and for each craft, classification, or type of worker needed to execute the public works project. (Labor Code §1773)

6) Provides that private residential projects built on private property are not subject to the requirements of public works provisions, unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority. [Labor Code §1720(c)(1)]

7) Authorizes the Labor Commissioner, or their designee, to issue civil wage and penalty assessments on a contractor or subcontractor, or both, that fails to pay prevailing wages in connection with a public work. (Labor Code §1741)

This bill:

1) Expands the definition of "public works," thereby requiring the payment of prevailing wages for this work, to include offsite, custom fabrication of sheet metal ducts or similar sheet metal products for heating, ventilation, and air conditioning systems produced as a nonstandard item solely and specifically designed and engineered for installation in a public works project.

2) Specifies that for public works projects, prevailing rate of per diem wages must be paid for work in the locality in which the public work *project is located* (striking the existing reference to where it is performed).

COMMENTS

1. Background: Sheet Metal Workers' International Association, Local 104 v. Duncan

The bill proposes to address a matter that has been the subject of debate both within DIR and in the courts. At issue is the question of whether or not off-site, custom fabrication of sheet metal ducts or similar sheet metal products that are made specifically and solely for a particular public works project (that is already subject to the payment of prevailing wages for other work) should be subject to the payment of prevailing wages – even though they are not fabricated at the construction site or construction yard.

On November 13, 2008, the Director of the Department of Industrial Relations (DIR) issued a public works coverage determination in *Public Works Case No. 2007-008 Russ Will Mechanical, Inc. – Off-site Fabrication of HVAC Components*, finding that, under the facts of the case, certain off-site fabrication work performed in the permanent shop of the on-site heating, ventilating and air conditioning (HVAC) subcontractor was done **in the execution of a contract for public work** within the meaning of Labor Code section 1772 and was therefore subject to prevailing wage requirements. On December 18, 2008, the subcontractors, Russ Will Mechanical, Inc., filed a notice of administrative appeal of the determination. On May 3, 2010, after review and consideration, DIR Director John Duncan **granted the appeal and the determination was reversed.** Among other things, the final DIR decision noted that, "In past determinations finding such work to be covered, the off-site fabrication was performed at a temporary yard established specially for the project in question, not in a subcontractor's own permanent shop."[1]

[1] Public Works Case No. 2007-008 Russ Will Mechanical, Inc. – Off-site Fabrication of HVAC Components. https://www.dir.ca.gov/OPRL/coverage/year2010/2007-008(A).pdf

The Sheet Metal Workers' International Association, Local 104 filed a petition for a writ of mandate in the superior court against DIR and its director challenging the department's coverage decision. The union argued that, unlike a material supplier that is exempt from the prevailing wage law, the employees at Russ Will's offsite facility fabricated customized sheet metal items in accordance with the specifications in the project's contract documents. According to Local 104, because the custom fabrication was an integral part of the project and was performed in the execution of a public works contract, the work should have been covered by the prevailing wage law.

On August 27, 2014, the First District Court of Appeal in *Sheet Metal Workers' International Association, Local 104 v. Duncan (2014) 229 Cal.App.4th 192* affirmed the May 3, 2010 decision by the DIR finding that the off-site fabrication of sheet metal components was not subject to prevailing wages. The court noted the following:

> Offsite fabrication is not covered by the prevailing wage law if it takes place at a permanent, offsite manufacturing facility and the location and existence of that facility is determined wholly without regard to the particular public works project. Because the offsite fabrication at issue here was conducted at Russ Will's permanent offsite facility, and that facility's location and continuance in operation were determined wholly without regard to the project, the work was not done "in the execution" of the contract within the meaning of section 1772.[2]

As noted in the DIR determination in the original appeal, "the role of the Department is limited to interpreting and enforcing the Labor Code as enacted by the legislature. It would be an improper usurpation of the legislative function for the Department to impose its own social and economic policy judgments under the guise of statutory interpretation. See, State Building Trades, supra, 162 Cal.App.4th at p. 324 ["These are issues of high public policy. To choose between them, or to strike a balance between them, is the essential function of the Legislature, not a court."]" ***Therefore, this bill brings the matter to the Legislature to resolve the question of whether or not off-site, custom fabrication of sheet metal ducts or similar sheet metal products for HVAC systems produced exclusively for that public works project should be considered "public works" and subject to the payment of prevailing wages.***

2. Need for this bill?

According to the author, "Traditionally, fabrication of custom sheet metal ducts for heating, ventilation and air conditioning systems took place at the jobsite. Technological advances in computer modeling of blueprints and prefabrication practices now allows the fabrication of custom sheet metal ducts to be performed either onsite or offsite. Offsite custom-fabricated duct work is unique because it requires integration with the specific blueprints for the project and can be used only on the project for which it is constructed. This work is nonstandard and custom-made for a particular project. Offsite fabrication increases safety, productivity, and efficiency by facilitating the use of permanently installed, computer guided plasma cutters and by allowing project planners to schedule construction activities taking place at secondary and primary sites at each stage of construction. This reduces delays caused by "crowding" in the corridors and other spaces at a jobsite.

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[2] Sheet Metal Workers' International Association, Local 104 v. Duncan (2014) 229 Cal.App.4th 192

Offsite custom fabrication, however, has also been used to increase developer and contractor profits by evading prevailing wage requirements based on a technical legal interpretation that offsite work does not fall under the definition of "construction work" in Labor Code section 1720. Allowing custom fabrication to evade prevailing wage requirements incentives developers to construct significant parts of the project outside of the local area using low paid, low-skilled workers who do not have the protection that workers performing the exact same work have when it is performed directly on the project site. This provides windfall profits to developers at the expense of local workers and the local economy."

3. Proponent Arguments:

The sponsors of the measure, the Western States Council of Sheet Metal Workers, write, "It is important to note that the Department of Industrial Relations determination was upheld as not arbitrary and capricious; it was not determined by the court to be the only possible interpretation. In contrast, other states and jurisdictions including New Jersey, Massachusetts, the State of Washington and the City of Philadelphia have recognized the project specific nature of custom fabrication and have either issued determinations or passed legislation to require prevailing wage for offsite, non-standard, custom fabrication for public works construction projects." They argue that this bill would update Labor Code Section 1720 to follow the lead of these other states and jurisdictions.

Furthermore, they argue, "The purpose of prevailing wage laws is to ensure that public investments do not undermine local wages and do not provide an incentive for employers to rely on poorly trained, low wage workers. It also creates a level playing field in the bidding process ensuring that contractors compete on quality rather than on who can pay their workers the least amount of money." Additionally, "The application of prevailing wage requirements to public work projects also ensures that public investments support job development for disadvantaged workers by requiring the employment of apprentices."

They offer as an example, that "the California Department of Apprenticeship Standards requires every apprenticeship program to include an equal opportunity program with an affirmative action plan to recruit women and minority applicants. These requirements apply to custom fabrication work performed on a project site or at a temporary offsite facility, but the Duncan decision created a loophole eliminating these requirements from applying when the exact same work is performed at a permanent fabrication facility."

In conclusion, they argue that, "As long as developers are designed to encourage hiring the cheapest workers, offsite fabricators that invest in apprenticeships and training will never be able to compete with contractors that hire cheap labor off the street. Because of this, a decision not to apply prevailing wage to custom fabrication is, in fact, a de facto policy to support the creation of low wage, no-benefit jobs."

4. Opponent Arguments:

The Construction Employers' Association is opposed to the measure, arguing that "in addition to running counter to both published case law and the Davis-Bacon Act, the measure is unimplementable, likely unconstitutional, will lead to dramatic cost increases for public works projects, and should have the unintended consequence of pushing fabrication to other states and countries where California has no jurisdiction."

Regarding costs, CEA argues, "The prevailing wage rate for a sheet metal worker in San Francisco is approximately $107 per hour, versus approximately $88 per hour in Fresno. The average non-union manufacturing rate in California is approximately $30 per hour. Per SB 830, workers who assemble products for the "execution of a contract" in San Francisco will be entitled to $107 per hour, regardless of if the fabrication work is performed in Fresno, or if it's done non-union. The substantial cost increases necessitated by this measure will be borne by public agencies and ultimately taxpayers. Further, to the extent that SB 830 pushes manufacturing to other states and countries, where California has no jurisdiction, California's economy and workforce will suffer"

Regarding enforcement, CEA argues, "There is no practical way for public entities or prime contractors to enforce prevailing wage requirements for off-site fabrication. First, California cannot force SB 830 requirements for work performed outside of the state, nor is it clear that the state can mandate that someone in Boise or Tijuana receive California prevailing wages. Were California to create an artificial barrier to entry for products manufactured out-of-state, because workers in those states are not paid California prevailing wages, the law would likely run afoul of the Dormant Commerce Clause which is intended to prevent the imposition of protectionist state policies that favor state business at the expense of out-of-state business.

Additionally, they argue, "because fabrication shops typically fabricate products for public and private works concurrently, it would be difficult for subcontractors to track payroll. Presumably these shops would need to have a public works wage rate and a private wage rate because no private developer would select parts from a manufacturer with an hourly wage rate of $107. As a result, it would be difficult to resolve worker disputes concerning hourly wages because workers are not confined to a single public works location, e.g. a physical construction site. These disputes will ultimately delay payments by general contractors to subcontractors because of joint and several liability."

Further, although SB 830 would seemingly level the playing field between signatory sheet metal contractors, who are obligated to pay a higher shop rate pursuant to their collective bargaining agreements, and non-union sheet metal subcontractors who are bound to a shop rate, the effect would likely be quite different. Invariably, union workers used to receiving higher public works wages would elect not to perform private work, so all of that work would go non-union. In effect, the union signatory sheet metal industry would cede the private market."

Additional opposition from the Western Electrical Contractors Association notes that, the logic proposed for this expansion "will eventually apply to ALL construction materials utilized on a public works project." WECA believes this change is misguided and will add complexity for manufacturers and additional cost to taxpayers who "foot the bill" for public construction.

5. Prior Legislation:

AB 1851 (Rivas, Chapter 764, Statutes of 2022) expanded the definition of "public works" to include on-hauling of materials used for paving, grading, and fill onto a public works site and requires workers performing this work to be subject to prevailing wage requirements.

SUPPORT

Western State Council of Sheet Metal Workers (Sponsor)

OPPOSITION

Construction Employers' Association
Western Electrical Contractors Association

-- END --

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

Bill No:	SB 432	**Hearing Date:**	April 26, 2023
Author:	Cortese		
Version:	February 13, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Teachers' retirement

KEY ISSUE

Should the state, in accordance with an agreement between the Administration and the sponsor of last year's AB 1667 (Cooper), which prospectively protects CalSTRS retirees from employer[1] errors in reporting compensation to CalSTRS that result in pension overpayments, make necessary and clarifying changes to the recently enacted law to ensure that CalSTRS' tax qualified status is not at risk?

ANALYSIS

Existing law:

1) Requires CalSTRS, at least annually, to provide resources ("Guidance") that interpret and clarify the applicability of creditable compensation and creditable service laws and related regulations. (Education Code (ED) § 22325 (a))

2) Prohibits CalSTRS from applying new or different Guidance to a member until after CalSTRS issues notice to the employer and union of its revised Guidance. Existing law, as enacted by AB 1667, also prohibits CalSTRS from applying revised Guidance retroactively to compensation reported prior to providing that notice, unless state or federal law or the Governor's executive order ("Other Superseding Law" or "OSL") expressly requires a retroactive application. (ED § 22325 (b) (1))

3) Prohibits CalSTRS' revised Guidance from applying to a member before the next July 1, after its issuance unless changes to OSL, an advisory letter, or programs require application of the revised Guidance, as specified, on an earlier basis. (ED § 22325 (b)(2))

4) Except when OSL *expressly* supersedes CalSTRS' rules, existing law enacted by AB 1667 holds employers responsible for purposes of audits or any other CalSTRS' actions for CalSTRS' rules in effect at the time employers report compensation. If CalSTRS subsequently determines that the superintendent or school employer reported in error compensation reported in accordance with CalSTRS' Guidance at the time, the resulting overpayment shall be deemed a CalSTRS' error and AB 1677 enacted provisions require CalSTRS to recover the costs, with interest as specified, of the resulting overpayment as follows: 85% from the state through a continuous General Fund appropriation and 15% directly from all school employers. (ED § 22325 (c))

[1] Depending on context, "employer" may include a county superintendent reporting to CalSTRS on behalf of a school employer.

5) Defines "Advisory letter" to mean a written determination issued by CalSTRS to an employer or union in response to the employer's or union's submission relating to compensation that is included, or is proposed to be included, in a publicly available written contractual agreement in order for the CalSTRS to provide formal written Guidance for the proper reporting of such compensation consistent with the laws governing creditable compensation and the administrative regulations of the system. (ED § 22326 (a) (1))

6) Requires CalSTRS to provide an advisory letter regarding the employer or union's submission within 30 days of the receipt of all information requested by CalSTRS unless an extended period of time is necessary for good cause but provides that OSL may supersede the advisory letter. (ED § 22326 (d))

7) Deems any resulting overpayment from compensation reported in error by the employer or on behalf of a member to whom an advisory letter applies that was in accordance with CalSTRS' advisory letter, as CalSTRS' error and requires CalSTRS to recover the costs, with interest as specified, of the resulting pension overpayment as follows: 85% from the state through a continuous General Fund appropriation and 15% directly from all school employers. (ED § 22326 (e))

8) Requires CalSTRS to recover overpayments, except as limited by existing statute of limitation laws that limit the time CalSTRS has to recover overpayments (i.e., generally three years), as follows:

    a. All amounts that CalSTRS has overpaid to a member due to inaccurate information, untimely submission, nonsubmission of information, or on the basis of fraud or intentional misrepresentation by, or on behalf of, a recipient of a benefit, annuity, or refund, from, as applicable, the member, participant, former member, former participant, or beneficiary except amounts overpaid as described below. (ED § 24616.2. (a) (1))
    b. All amounts overpaid due to the employer's inaccurate information, untimely submission, or nonsubmission of information, as specified. CalSTRS shall recover such amounts from the employer. (ED § 24616.2. (a) (2))
    c. Amounts overpaid due to a county superintendent's inaccurate information, untimely submission, or nonsubmission of information, as specified. CalSTRS shall recover such amounts from the county superintendent who in turn, may recover from the employer if the employer was the cause of such reporting or approved the reporting by the superintendent, as specified. (ED § 24616.2. (a) (3))
    d. Amounts overpaid due to errors deemed by AB 1667 (Cooper, 2022) to be CalSTRS' error. CalSTRS shall recover the costs, with interest as specified, of the resulting pension overpayment as follows: 85% from the state through a continuous General Fund appropriation and 15% directly from all school employers. (ED § 24616.2. (a) (4))

9) Requires CalSTRS to correct a recipient's benefit to recover an overpayment but prohibits CalSTRS from reducing a person's benefit by more than 15%, as specified, if the error that caused the overpayment was due to inaccurate information or nonsubmission of information by, or on behalf of, the benefit recipient (not including such an error by CalSTRS, the county superintendent, or a school employer). (ED § 24617. (a))

This bill:

1) Clarifies that the exception to the prohibition against retroactive application of CalSTRS' Guidance applies as "the result of" OSL and that OSL does not need to "expressly" require a retroactive interpretation. This change is necessary to avoid potential conflicts, particularly with federal law, where it is unlikely that OSL will expressly cite existing California Education code to nullify CalSTRS' Guidance but where non-compliance with OSL could risk CalSTRS' tax qualification status or expose CalSTRS to other legal sanctions.

2) Deletes the "next July 1" date, which AB 1667 provisions set as the earliest CalSTRS may make its revised Guidance apply. Thus, CalSTRS will be able to make its revised Guidance effective upon issuance.

3) Requires CalSTRS to provide notice of determination of an error in reported compensation and any resulting overpayment in writing *to the individual member*, not just to the employer and the union.

4) Requires CalSTRS to base a determination of error on the applicable law at the time that the employer reported the compensation.

5) Requires CalSTRS, in the notice, to identify the error, document the source of the error, and specify the total amount, if any, overpaid due to the error.

6) Requires that, notwithstanding the changes made by AB 1677, all amounts that have been overpaid due to compensation that CalSTRS determines was paid to enhance a member's benefits for purposes of pension spiking in conflict with specified provisions aimed at protecting the integrity and purpose of the pension system, be recovered from the member, participant, former participant, or beneficiary receiving the allowance or annuity benefit, the employer, or both.

7) Clarifies that the AB 1667 provision that limits CalSTRS from recovering an overpayment by reducing a member's benefit by no more than 15 percent, as specified, applies when CalSTRS recovers *from the member*. Also, this bill clarifies that the 15 percent limitation also applies when the error was caused by untimely submission of information. Finally, this bill removes confusing references to CalSTRS and employer error that are unnecessary since overpayments resulting from those errors CalSTRS must collect from the state or employer not the benefit recipient.

COMMENTS

1. Need for this bill?

According to the author this bill codifies an agreement between AB 1667 (Cooper, 2022)'s sponsor and the Administration to provide cleanup legislation to AB 1667 to ensure that CalSTRS' tax qualification status is not compromised.

2. Committee Recommended Amendments

Because SB 432 revises ED § 24616.2 (a) by adding a new paragraph (2), the following sections that reference old paragraph 24616.2 (a) (4) need to be amended to reference paragraph (5).

Ed Code Section 22325 (c) (1):

(c) (1) For purposes of audits or any other actions by the system, employers are responsible for the rules in effect at the time the compensation is reported, except when superseded by state or federal law or an executive order of the Governor. If the system later determines that compensation reported in accordance with the system's rules pursuant to this section, including all rules for accuracy and timeliness, has been reported in error, the system shall provide notice, as described in paragraph (2), and any resulting overpayment to the individual member shall be deemed an error by the system and shall be recovered pursuant to paragraph **(5)** ~~(4)~~ of subdivision (a) of Section 24616.2.

Ed Code Section 22326 (e):

(e) If the system later determines that compensation reported in accordance with the system's advisory letter provided pursuant to this section has been reported in error by the employer or on behalf of a member to whom the advisory letter expressly relates, the resulting overpayment to the individual member shall be deemed an error by the system and shall be recovered pursuant to paragraph **(5)** ~~(4)~~ of subdivision (a) of Section 24616.2. Notice of determination of an error in compensation reported to the system in accordance with the system's advisory letter shall be provided in writing. A determination of error shall be based on the law that was applicable at the time that the compensation was reported.

3. Proponent Arguments

According to the California Retired Teachers Association:

SB 432 would "…revise the newly updated California State Teachers' Retirement System's auditing rules enacted in 2023 (sic), specifically regarding the timeliness and accuracy, as well as how overpaid funds to retirees can be recovered."

4. Opponent Arguments:

None received

5. Prior Legislation:

AB 1667 (Cooper), Chapter 754, Statutes of 2022, protected retired teachers from having to repay pension overpayments and reductions in pension allowances arising from employer errors in reporting creditable compensation by shifting those costs to the state and the school employer and altered how CalSTRS can audit public school employers, employees, and retirees related to the reporting of creditable service and compensation.

SUPPORT

California Retired Teachers Association
California Teachers Association
Delta Kappa Gamma International

OPPOSITION

None received

-- END --