California State Senate

LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

DAVE CORTESE
CHAIR

Principal Consultant
Glenn Miles
Alma Perez

Consultant
Dawn Clover

Committee Assistant
Emma Bruce

Capitol Office, 1021 O Street, Suite 6740
(916) 651-1556
FAX: (916) 644-6652

AGENDA

Wednesday, July 12, 2023
9:30 a.m. -- 1021 O Street, Room 2200

MEASURES HEARD IN FILE ORDER

1.	AB 338	Aguiar-Curry	Public works: definition.
2.	AB 366 **(CONSENT)**	Petrie-Norris	County human services agencies: workforce development.
3.	AB 472	Wicks	Classified school district and community college employees: compulsory leaves of absence: compensation.
4.	AB 524	Wicks	Discrimination: family caregiver status.
5.	AB 520	Santiago	Employment: public entities.
6.	AB 636	Kalra	Employers: agricultural employees: required disclosures.
7.	AB 892	Bains	Kern County Hospital Authority.
8.	AB 938	Muratsuchi	Education finance: local control funding formula: base grants: classified and certificated staff salaries.
9.	AB 1136	Haney	State Athletic Commission: mixed martial arts: pension fund.
10.	AB 1137	Jones-Sawyer	Excluded employees.
11.	AB 1140 **(CONSENT)**	Insurance	Insurance.
12.	AB 1204	Holden	Contractors: contracts: restrictions.
13.	AB 1484	Zbur	Temporary public employees.
14.	AB 1593	Garcia	California Workforce Development Board: Salton Sea geothermal resources area: Equitable Access Program.
15.	AB 1699	McCarty	K–14 classified employees: part-time or full-time vacancies: public postings.

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

Bill No:	AB 338	**Hearing Date:**	July 12, 2023
Author:	Aguiar-Curry		
Version:	January 30, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Public works: definition

KEY ISSUE

Should the Legislature expand the definition of "public works" to include fuel reduction work performed as part of a fire mitigation project contract over $100,000 to require the projects be subject to prevailing wage requirements?

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 a "public work" to include, among other things, publicly funded projects valued over $1000, such as construction, alteration, demolition, installation, or repair work done under contract, except work done directly by any public utility company pursuant to an order of the Public Utilities Commission or other public authority. (Labor Code §1720)

3) Specifies that for prevailing wages, "construction" includes work performed during the design and preconstruction phase of construction, including, but not limited to, inspection and land surveying work and work performed during the post construction phase, including, but not limited to, all cleanup work at the jobsite. (Labor Code §1720)

4) Exempts from prevailing wage work performed by a volunteer for civil, charitable, or humanitarian reasons for a public agency or 501(c)(3) nonprofit corporation. (Labor Code §1720.4)

5) 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)

6) Requires that the applicable general prevailing rate of per diem wages be determined by the Director of the Department of Industrial Relations 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)

7) 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)

8) Authorizes the Labor Commissioner, or their designee, to issue civil penalties for a contractor or subcontractor that fails to pay prevailing wages in connection with a public work. (Labor Code §1741)

This bill:

1) Adds to the definition of public works, beginning January 1, 2025, fuel reduction work performed as part of a fire mitigation project.

2) Defines a fire mitigation project as residential chipping, rural road fuel breaks, fire breaks, and vegetation management projects that fall within an occupation for which an apprenticeship program has been approved and to contracts in excess of $100,000.

3) Exempts nonprofit organizations until January 1, 2026.

4) Exempts work performed on federally recognized Native lands.

COMMENTS

1. Background

In the wake of 2018, the third deadliest and most destructive wildfire seasons on record in California, Governor Newsom issued Executive Order N-05-19 directing CAL FIRE to submit a report with recommendations of the most impactful administrative, regulatory, and policy changes or waivers necessary to prevent and mitigate wildfires to the greatest extent possible, with an emphasis on environmental sustainability and protection of public health. The following month, CAL FIRE released its report, which found forest management efforts by the state, federal government, and private landowners were inadequate to improve the health of millions of acres of forests and wildlands that require maintenance. Additionally, a reported 15 million acres of forests were in need of restoration.

In March 2019, the Governor declared a state of emergency and waived environmental regulations to expedite forest management projects. The following year, 4.3 million acres burned as another record was set in California, more than double the previous 2018 record. In 2021, nearly 2.6 million acres burned. One direct contributor to the wildfires was the increase in dead tree fuel.[1]

With California facing a massive backlog of forest and fuel management work, the 2019-20 state budget allocated $355 million in wildfire prevention and resource management funding. It was estimated at that time that millions of acres were in need of treatment, with a roughly estimated average cost of between $3-4 thousand dollars per acre. The following year, the 2020-21 state budget appropriated $203 million for these activities. By 2021, there was a

[1] https://www.sfchronicle.com/news/article/Ferguson-Fire-Tree-mortality-epidemic-adding-to-13109023.php

significant increase in wildfire resilience funding with a $988 million appropriation for wildfire resilience in the 2021-22 state budget. Last year's budget included a commitment to provide $600 million annually ongoing toward these efforts, which treats roughly 500,000 acres.

Fuel Mitigation Work
Fuel reduction work is undertaken by CAL FIRE's Fuels Reduction Crews, firefighter hand and engine crews, as well as partnerships with the California National Guard, California Conservation Corps, and California Department of Corrections and Rehabilitation. CAL FIRE also oversees millions of dollars in grant funds for ongoing local fuel reduction projects in and around communities and wildlands, which include the removal or reduction of overgrown vegetation through the use of prescribed burning, tree thinning, pruning, and roadway clearance, among other strategies. This bill addresses the types of local mitigation projects where work is already within an apprentice able occupation, such as roadway clearance. For example, if there is a fuel mitigation project over 25 acres that costs $4000 per acre, the prevailing wage requirement in this bill would be applicable.

Apprenticeship Programs
The California-Nevada Power Lineman Joint Apprenticeship and Training Committee offers a program to train highly skilled journey level workers in outside electrical construction. There are various approved apprenticeship programs for tradespersons, who are trained in heavy equipment operation, including earth moving equipment, which is utilized when crating road fuel breaks, fire breaks, and vegetation management. There are also specialty arborist apprentices trained in tree health, pruning, tree and vegetation removal, and heavy equipment operation.

2. Need for this bill

The author states "Catastrophic wildfires have unfortunately become an annual occurrence in California. In 2021 alone the state saw 8,786 active wildfires that burned approximately 2,568,941 acres of land, destroyed 3,629 structures, and, most devastating of all, took the lives of three California citizens. Given this new reality, the state has placed a strong emphasis on wildfire mitigation work as a means to reduce the intensity of wildfire season. While wildfire mitigation is often talked about as a mechanism to protect houses from wildfires, wildfire mitigation is also a critical component of protecting various public works, including transportation infrastructure, public schools, and public buildings. In this sense, wildfire mitigation can and should be seen as a "maintenance activity" that is desperately needed to ensure the safety and functionality of existing public works. This bill ensures that contracted-out wildfire mitigation work is considered a public works, which guarantees the fair payment of the workers participating in these projects and provides apprenticeship opportunities for aspiring tradesman. In an often dangerous environment, having better-paid and trained workers will prevent injuries and deliver a better, more efficient wildfire prevention."

3. Proponent Arguments

The California State Council of Laborers, International Union of Operating Engineers, State Building and Construction Trades Council, Southern California Contractors Association, and United Contractors state "Catastrophic wildfires have unfortunately become an annual occurrence in our State. In 2021 alone, the State saw 8,786 active wildfires that burned

approximately 2,568,941 acres of land, destroyed 3,629 structures, and most devastating of all took the lives of 3 California citizens. A look at the wildfire statistics over a 5 year period (2017-2021) paints a clear picture of our new reality. In that span of time the State has seen 43,830 wildfires that burned 10,610,149 acres of land, destroyed 49,355 structures, and took the lives of 186 of our fellow Californians.

Given this new reality, the state has placed a strong emphasis on wildfire mitigation work as a means to reduce the intensity of wildfire season. In the 2021-2022 budget, the Governor and the Legislature appropriated 1.5 billion towards wildfire prevention in an effort to protect California communities from wildfires and additionally ensured multi-year funding towards wildfire mitigation by requiring that 200 million greenhouse gas reduction fund dollars be spent annually on wildfire mitigation until 2028.

Wildfire mitigation is dangerous and labor-intensive work that involves the implementation of a variety of precautionary measures to protect communities from the spread of wildfires. Specifically, wildfire mitigation tasks typically include but are not limited residential chipping, rural road fuel breaks, fire breaks, and vegetation management. Simply put, successful wildfire mitigation involves the removal or thinning of natural fuels, including brush, and dead or dying trees in order to limit the uncontrolled spread of a wildfire. These projects are essential to protecting communities.

Our organizations have made good faith efforts to ensure that this piece of legislation does not have a negative impact on existing projects that are currently budgeted for, as we know the critical nature of this work should not be interrupted. With that in mind, as introduced, the bill would ensure a delayed implementation for contractors until January 1st of 2025. The bill additionally recognizes the role that non-profits play in performing wildfire mitigation work, specifying that the bill only applies to contracts over $100,000 and that the Public works requirements don't apply to non-profits until January 1st of 2026.

We would additionally point out that this bill will have no impact on volunteers or the conservation corps performing this work as they are currently exempted from public works laws pursuant to Labor Code Section 1720.4

Given the importance of these projects to communities, the regular occurrence that they will continue to play in day-to-day life, and the size and scale that many of these projects are expected to be, the state's investment in wildfire mitigation work presents an opportunity for apprentices to learn a trade, while also making a living wage and contributing in a positive manner to the health and safety of their communities. Providing these apprenticeship opportunities will ensure that the State has a large pool of skilled workers to efficiently perform this critical work for years to come.

AB 338 (Aguiar-Curry) seeks to ensure that contracted out wildfire mitigation work is considered a public works, which in return would ensure the fair payment of the workers participating in these projects and provide apprenticeship opportunities for aspiring workers in this industry. By providing this change, the State will additionally be providing clarity to contractors, awarding bodies, and labor compliance groups who participate in these projects."

4. Opponent Arguments

According to the Coalition of California Utility Employees, California State Association of Electrical Workers, and the Forest Products Industry Labor Management committee, "While we support intent of the legislation, unfortunately, the current version of AB 338 would not functionally work in the forest health sector, inclusive of forest products sector and could potentially harm unionized workforces within the forest management sector and vegetation management space.

While Operating Engineers and Laborers do perform the task of clearing land for preparation of construction projects, they DO NOT perform the work of forest thinning, mastication, site preparation and maintaining California's forests. The state's wildfire fuel reduction work does not involve simply clearing large plots of land, but rather involves highly specialized vegetation management practices, while also protecting public trust resources.

The jobs that are critical to this work involve specialized skill sets and rely upon highly specialized equipment that are not currently listed in the State's prevailing wage schedules. The International Union of Operating Engineers (IUOE) does not support classifications that include these types of expertise. The work involves highly skilled operators utilizing tracked feller bunchers, wheeled feller bunchers, tethered forwarders, heel boom loaders, masticators, and cable system operators to name just a few. In addition to trained operators of specialized equipment, forest resilience and wildfire prevention work also includes the reliance of a unique workforce, inclusive of prescribed fire crews, hand crews, herbicide application crews, reforestation crews, Registered Professional Foresters, Burn Bosses and Licensed Timber Operators. None of these classifications are currently covered by the State's prevailing wage schedules.

While the IUOE does offer skilled workforce for the purposes of construction and maintenance of infrastructure, and LIUNA does provide laborers, the type of work included in wildfire mitigation and wildfire recovery on forested landscapes simply does not fall within their purview or expertise. Neither union has a single signatory contractor that performs wildfire mitigation work.

The International Brotherhood of Electrical Workers is the ONLY union with more than 50 vegetation management contractors under agreement and more than 7,000 members working full time on vegetation management throughout the state The unions that make up the Forest Products Industry Labor Management Committee have a myriad of classifications performing work for Licensed Timber Operators and Licensed Registered Foresters in California.

Consequently, because prevailing wage classifications and wage rates in the fire mitigation and fuel reduction space have never existed before, we would remove our opposition with the following amendment:

1720 (9) (G)

"The Department of Industrial Relations shall perform a wage survey within the counties in which forestry wildfire mitigation and fuel reduction work will be performed in order to establish accurate prevailing wage rates in those counties. The survey shall cover fuel reduction and vegetation management work performed over the preceding 12 months by contractors on Forest land and wildlands using hand crews, as well as utilizing equipment common in the Forest Industry, including but not limited to tracked feller bunchers, wheeled

feller bunchers, tethered forwarders, heel boom loaders, masticators, and cable system operators. The survey shall be completed within 6 months of enactment of this Section.

The Coalition of California Utility Employees, California State Association of Electrical Workers and the Forest Products Industry Labor Management Committee does not oppose the application of prevailing wage on this work, as long as an appropriate wage survey is conducted to ensure that the true and accurate prevailing wage rates are established."

5. Prior Legislation

AB 1644 (Burke - Chapter 202, Statutes of 2022) required the air Resources Board to work with the Labor and Workforce Development Agency to update, by July 1, 2025, Greenhouse Gas Reduction Fund funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the fund meet specified standards, including fair and responsible employer standards and inclusive procurement policies, as provided. This bill exempted from these standards applicants for projects for healthy forest and fire prevention programs and projects, and the completion of prescribed fire and other fuel reduction projects.

AB 1717 (Aguiar-Curry, 2022) would have expanded the definition of "public works," for the purpose of the payment of prevailing wages, beginning on January 1, 2024, to also include fuel reduction work paid for in whole or in part by public funds performed as part of a fire mitigation project, including, but not limited to, residential chipping, rural road fuel breaks, fire breaks, and vegetation management. *This bill was vetoed by Governor Newsom, who stated "I am concerned that adding these projects to the definition of "public works" would introduce delays to critical fire mitigation projects necessary to protect vulnerable communities in the state. Such delays are a function of the administrative requirements that are imposed when executing a public works project. I am directing my administration to work with the Legislature and sponsors of this bill to further examine this issue and propose solutions to ensure that we are both paying this critical workforce fairly while not unduly delaying these projects that protect people's lives and livelihoods."*

AB 1851 (R. Rivas - Chapter 764, Statutes of 2022) expanded the definition of "public works," for the purpose of the payment of prevailing wages, to also include the on-hauling of materials used for paving, grading, and fill onto a public works site.

AB 1886 (Cooper, 2022) would have expand the definition of public works for the purpose of the payment of prevailing wages to include street sweeping maintenance performed for the preservation, protection, and keeping of any publicly owned or publicly operated street, road, or highway done under contract and paid for in whole or in part out of public funds. *This bill failed passage on the Assembly Floor.*

SB 978 (McGuire - Chapter 472, Statutes of 2022) required the Department of Resources Recycling and Recovery to prequalify contractors to enter into contracts to perform prescribed wildfire debris cleanup and removal work in communities impacted by wildfires. Among the requirements of the contractors was that they pay a prevailing wage.

AB 2463 (Lee - Chapter 210, statutes of 2023) extended the sunset date on a public works exemption for specified volunteers until 2031.

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

AB 2765 (O'Donnell - Chapter 355, Statutes of 2020) expanded the definition of "public works," for the purpose of the payment of prevailing wages, to also include any construction, alteration, demolition, installation, or repair work done under private contract on a project for a charter school, as defined, when it is paid for, in whole or in part, with the proceeds of conduit revenue bonds issued on or after January 1, 2021.

AB 1768 (Carrillo - Chapter 719, Statutes of 2019) expanded the definition of "public works" to include work performed during construction site assessments and feasibility studies, and specifies that preconstruction work is a part of "public works," regardless of whether any further construction work is conducted.

SB 247 (Dodd - Chapter 406, Statutes of 2019) made several changes related to the vegetation management requirements of electrical corporations, including: requiring specified notifications to the California Public Utilities Commission Wildfire Safety Division (WSD) about the vegetation management conducted; specifying audits by the WSD; authorizing WSD to engage an independent evaluator and issue a report; and specifying qualifications and prevailing wages for line clearance tree trimmers.

AB 1066 (Aguiar-Curry - Chapter 616, Statutes of 2017) expanded the meaning of the term "public works" to include specific types of tree removal work.

AB 852 (Burke - Chapter 745, Statutes of 2015) expanded the definition of public works projects to include any construction, alteration, demolition, installation, or repair work done under private contract on a project for a general acute care hospital funded in whole or in part by conduit revenue bonds.

AB 26 (Bonilla - Chapter 864, Statutes of 2014) expanded the definition of "public works" to include 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 post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite.

AB 514 (R. Hernández - Chapter 676, Statutes of 2011) expanded the definition of "public works" to include the hauling of refuse, as defined, from a public works site to an outside disposal location.

AB 219 (Daly - Chapter 739, Statutes of 2015) expanded the definition of "public works" to include the hauling and delivery of ready-mixed concrete to carry out a public works contract.

SUPPORT

California State Council of Laborers (Co-sponsor)
International Union of Operating Engineers, Cal-Nevada Conf. (Co-sponsor)

Southern California Contractors Association (Co-sponsor)
State Building & Construction Trades Council (Co-sponsor)
United Contractors (Co-sponsor)
California Labor Federation, AFL-CIO
International Union of Painters and Allied Trades, District Council 16

OPPOSITION

Associated California Loggers
Butte County
California Association of Resource Conservation Districts
California Forestry Association
California Licensed Foresters Association
California Society of American Foresters
California State Association of Electrical Workers
Coalition of California Utility Employees
Del Norte County
El Dorado County Water Agency
El Dorado Irrigation District
Elsinore Valley Municipal Water District
Forest Landowners of California
Forest Products Industry National Labor Management Committee
Golden State Natural Resources
Humboldt Redwood Company LLC
Kern County
Mendocino County
Mendocino County Fire Safe Council
Mountain Counties Water Resources Association
Nevada County
Pacific Forest Trust
Placer County
Rural County Representatives of California
Shasta County
Tuolumne River Trust

-- END --

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

Bill No:	AB 366	**Hearing Date:**	July 12, 2023
Author:	Petrie-Norris		
Version:	May 18, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: County human services agencies: workforce development

KEY ISSUE

Should the Legislature allow counties that have a 20 percent or more employment vacancy rate for at least 30 consecutive days to use alternate minimum qualifications to meet workforce demands?

ANALYSIS

Existing law:

1) Requires the California Department of Human Resources (CalHR) to establish and maintain personnel standards on a merit basis and administer merit systems for local government agencies, where such merit systems of employment are required by statute or regulation, as a condition of a state funded program or a federal grant program. Local agencies are defined as a city, county, city and county, district, or other subdivision of the state, or any independent instrumentality thereof. (Government Code §§19800)

2) Requires CalHR to, by regulation, establish and maintain personnel standards on a merit basis for local agencies (including standards of qualifications, competency, education, experience, tenure, and compensation) necessary for proper and efficient administration, and to ensure state conformity with applicable federal requirements. (Government Code §19801)

3) Requires CalHR to administer the merit system for employees engaged in administering a state funded program or a federal grant program in a local agency not administering its own merit system. Further, permits CalHR to delegate any of its duties to a state department or agency, which may include, but is not limited to, recruitment, examination, certification, appointment, and other transactions, position classification, compensation standards, and disciplinary actions. (Government Code §19803)

This bill:

1) Instructs CalHR to permit local agencies with an employment vacancy rate of 20 percent or greater for 30 consecutive days in any state funded or federal grant program to use alternate minimum qualifications and processes to screen applications

2) Requires CalHR to establish eligibility lists for recruitment of new staff and advancement of existing staff until the vacancy rate falls below 20 percent continuously for three consecutive months.

3) Establishes that alternatives authorized by the provisions of this bill include, but are not limited to:

   a) Allowing counties to screen and establish eligibility lists directly with oversight by CalHR;

   b) Implementing alternative examination requirements without advance approval by CalHR; and

   c) Waiving examination components.

4) Provides that any alternative processes that requires CalHR approval be responded to within seven calendar days of the receipt of the request from the county.

5) Requires any alternative criteria or processes to comply with all applicable CalHR regulations.

6) Requires, no later than July 1, 2026, CalHR to convene representatives of local agencies and applicable state departments, including, but not limited to CDSS and the Department of Child Support Services, to develop and implement streamlined processes and requirements in the implementation of a merit-based personnel system.

7) Permits CalHR to implement any policy changes through departmental memoranda until regulations are adopted, and, further, affords the departmental memoranda the same force and effect of regulations.

8) Requires CalHR to adopt regulations to implement certain provisions of this bill related to streamlined processes and requirements, as specified, by July 1, 2027.

COMMENTS

1. Background

The committee is analyzing this bill as it pertains to merit system policy within its jurisdiction and defers the remaining policy issues to the Senate Committee on Human Resources.

Workforce Shortages
The sponsor, the County Welfare Directors Association, has collected data from their member agencies and found Sacramento County has 60 social worker positions vacant or understaffed, Butte County has a human services vacancy rate of 21 percent, Tehama County Department of Social Services has a 36 percent vacancy rate, and Yuba County Health and Human Services department has a vacancy rate of 15 percent. In order to combat human service workforce shortages in California, the state has created several programs, such as the California Department of Aging California GROWs workforce training and stipend program, Department of Health Care Access and Information programs, and a recent $35 million allocation to California State Universities to increase behavioral care workforce education and training.

Merit System as it Pertains to Local Governments

In 1913, the Legislature passed the Civil Service Act to prevent the "spoils system" in which state jobs were being provided based on political allegiance and personal relationships. The Civil Service Act of 1934 was passed by the voters due to persistent spoils system legacies. Thus, the California Constitution requires all appointments and promotions to be made based on the employee's ability to do the job based on competitive examination.

When hiring employees to address workforce shortages, counties are required to comply with prescribed personnel and hiring practices, such as those required by the Merit System Services program (MSS). CalHR is the entity responsible for ensuring counties that receive federal funds for programs within their Social Services and Child Support Services departments adhere to federal merit principles.

Not all counties are subject to the MSS Program, however, and current law permits most counties in California to administer their own personnel systems for program employees based on CalHR's review and approval of the personnel management system. Counties that operate their own personnel management system are referred to as Approved Local Merit Systems (ALMS) counties. The remaining counties utilize the MSS Program standards, and include the counties of Alpine, Amador, Calaveras, Colusa, Del Norte, El Dorado, Glenn, Humboldt, Imperial, Inyo, Lake, Lassen, Madera, Mariposa, Merced, Modoc, Mono, Monterey, Plumas, San Benito, Sierra, Sutter, Tehama, Tuolumne, and Trinity.

2. Need for this bill

According to the author, "California is facing a workforce crisis. While that can be devastating enough for businesses in the private sector, for counties which are tasked with administering and delivering critical social safety net programs, as well as our child welfare system and adult protective services, when there aren't enough workers to go around programs fall behind, clients aren't timely served, and current workers get burnt out from overwhelming caseloads and leave county service altogether.

AB 366 addresses this workforce shortage in two ways: First, it gives hiring flexibility to counties with a 20% or greater workforce vacancy while still protecting merit based hiring. Second, AB 366 creates the "Building Diversity in Human Service Workforce" grant program to expand the California Social Work Education Center (CalSWEC) Title IV-E stipend program in rural counties for community collect students who have an interest in public child welfare work. This will also allow the state and counties to leverage the 75 percent federal match for training leading to state or local agency employment, which is not limited to pursuit of a bachelor's or master's level education.

By giving flexibility and funding we can bring folks into the workforce who have either unfairly been carved out due to antiquated hiring practices or who may not consider public employment a viable option due to exorbitant educational costs or other barriers to entry."

3. Double Referral

This bill was first heard in the Senate Committee on Human Resources, where it passed with a 5-0 vote.

4. Proponent Arguments

According to the County Welfare Directors Association, "County human service agencies are facing critical staffing shortages across all program areas. Competition for staff is fierce both within the county (across programs and services as well as the private sector) and across county lines. Rapid turnover of county staff undermines the quality of services provided to consumers of county programs, impedes progress for improving county practices, and potentially can result in fiscal sanctions in some situations (for example federal Child and Family Service Reviews). Shortages are present in urban counties struggling with high caseloads and rural counties that have an extremely small pool of qualified candidates. This issue, which impacts the whole state, will not improve unless meaningful action is taken to expand the workforce.

Last year, after strong advocacy by CWDA and the National Association of Social Workers (NASW), the State Budget provided $30 million General Fund to expand slots in schools of social work to increase the pool of Master's level social workers. While this is a necessary first step, there will be several years before the new MSW's enter the workforce, and this aspect of staffing needs only accounts for part of the county-level staffing shortages.

For counties that use the state-administered Merit System for job applicants, AB 366 would require that Merit use alternate minimum qualifications for any county that has a 20% or greater vacancy rate. This measure will quickly help shore up the workforce where most needed while still ensuring that new workers are qualified.

AB 366 would also establish the "Building Diversity in Human Service Workforce Program" as an opt-in grant program administered by the California Department of Social Services (CDSS). This would be a two-year program and priority would be given to counties that demonstrate a commitment to building diversity in their programs by recruiting and supporting persons from underserved and/or over-represented communities. The grant program will help fund county programs for three potential tracks: a high school to career track, a college to career track, and a community to career track. Estimated costs associated with this program would be $30 million.

Finally, AB 366 would require CDSS to work with counties and the California Social Work Education Center (CalSWEC), to establish a Title IV-E stipend program in rural counties for community college students who have an interest in public child welfare work. This will allow the state and counties to leverage the 75 percent federal match for training leading to state or local agency employment, which is not limited to pursuit of a bachelor's or master's level education. Estimated costs for this program would be $5 million.

In all, the resources provided in AB 366 would ensure that vital social services programs continue to operate effectively for those most in need."

5. Opponent Arguments

None received

6. Prior Legislation

AB 178 (Committee on Budget), Chapter 45, Statutes of 2022, allocated $50 million for the purpose of increasing the number of child welfare social workers in emergency response

services, and made available $25 million to support the Employment Training Panel training health and social workers, among other allocations.

AB 3224 (Thurmond – Chapter 179, Statutes of 2018) requires all eligibility decisions for Medi-Cal, CalWORKs, and CalFresh made at the county level to be made exclusively by a merit or civil service employee of the county.

AB 1062 (Jones-Sawyer, 2013) clarified the authority of CalHR resulting from the merger of the State Personnel Board and the Department of Personnel Administration initiated in the Governor's Reorganization Plan No. 1 of 2011 and updated civil service statutes to reflect modern processes and promote greater efficiency.

SB 523 (Correa, 2013) prohibited CalHR from granting any administrative waivers in Orange County if an audit finds the county to be out of compliance with a merit-based personnel system. *This bill was held in the Senate Committee on Appropriations.*

AB 1542 (Ducheny - Chapter 270, Statutes of 1997) limited a county's ability to contract out to private entities some of the services in their CalWORKs program.

SUPPORT

County Welfare Directors Association of California (Sponsor)
California Long-term Care Ombudsman Association
City and County of San Francisco
County of Santa Cruz Human Services Department
Humboldt County
San Francisco Human Services Agency
San Luis Obispo County Department of Social Services
Santa Clara County
SEIU California
Solano County Health and Social Services
Tehama County Department of Social Services

OPPOSITION

None received

-- END --

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

Bill No:	AB 472	**Hearing Date:**	July 12, 2023
Author:	Wicks		
Version:	May 18, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Alma Perez-Schwab		

SUBJECT: Classified school district and community college employees: compulsory leaves of absence: compensation

KEY ISSUE

Should the Legislature provide *non-merit school and community college district* classified employees the right to receive full compensation for a period of involuntary leave following a finding in favor of the employee for charges of a criminal offense or criminal investigation or due to an administrative delay outside the employee's control?

ANALYSIS

Existing law:

1) Provides various *voluntary* leaves of absence and requirements relating to compensation and the employment status subsequent to returning from such leaves for classified district employees. These leaves of absence include: vacation, illness, injury, pregnancy, parental, bereavement, and industrial and nonindustrial accidents, among other stipulations relating to the various leaves of absence. (Education Code (EDC) §45190 et seq. (related to K-12 school districts) and §88190 et seq. (related to community college districts))

2) Establish that the immediately aforementioned forms of leaves of absence apply to districts that have adopted the merit system in the same manner and effect as it were a part of the merit system, as provided. (EDC §45240 et seq. (relating to school districts) and §88060 et seq. (relating to community college districts)

3) Prohibits, subject to certain specified exceptions, the suspension, demotion, or dismissal without, or reduction in, pay of a permanent classified employee employed by a district who timely requests a hearing on charges against the employee and before a decision is rendered on the matter, among other provisions. (EDC §45113, §45122.1 and §88013)

4) Provides that, in addition to any other prohibition or provision, a person who has been convicted of a violent or serious felony must not be employed by a school district, as provided, and a school district must not retain a classified employee who is under these circumstances in employment who is a temporary, substitute, or probationary employee who has not attained permanent status, among other provisions, including that a person must not be denied of, or terminated from, employment solely on the basis that the person has been convicted of a serious felony that is not also a violent felony if that person can prove to the sentencing court, by clear and convincing evidence, that they have been rehabilitated for school employment for at least one year. (EDC §45122.1, §45123 and §45124)

5) Prohibits a person from being employed by a district if they have been convicted of a sex offense, as defined, or determined to be a sexual psychopath, as provided. (EDC §45123 and §45124 and §88023)

6) Authorizes a school district or county office of education (COE) to request a local law enforcement agency to conduct an automated records check of a prospective noncertificated employee to ascertain whether the prospective noncertificated employee has a criminal record, among other provisions. (EDC §45125.5)

7) Authorizes, for reasonable causes, an employee to be suspended without pay for no more than 30 days, except as provided, or demoted or dismissed; however, a school district must file written charges with the personnel commission within 10 days of the suspension, demotion or dismissal. (EDC §45304)

8) Specifies, ***for merit system districts***, that when an employee of the school district or county of education is charged with a mandatory leave of absence offense, the governing board of the school district must immediately place the employee on a compulsory leave of absence for up to 10 days after the date entry of the judgment in the proceedings, and once the employee is placed on such leave: (EDC §45304)

   a) The employee must continue to be paid their regular salary during the period of the leave if they provide a suitable bond or other security interest to the school district or governing board, as applicable. (EDC §44940.5)

   b) If the employee is acquitted of the offense, or the charges are dismissed against the employee, the school district must reimburse the employee for the cost of the bond upon the employee returning to service in the school district. (EDC §44940.5)

   c) If the employee does not elect to furnish a bond or other acceptable security, and if the employee is acquitted of the offense, or the charges against the employee are dismissed without guilt being established, the district must pay the employee their full compensation for the period of the compulsory leave upon their return to service in the school district, among other provisions. (EDC §44940.5)

This bill:

1) Requires that, if a school or community college district places an employee on an *involuntary* leave of absence during the period in which the employee is charged with a criminal offense; under criminal investigation; or, waiting due to administrative delay for necessary job-related administrative determinations, to pay the employee the employee's full compensation for the period of the involuntary leave of absence upon the employee's return to service for the district, if the conclusion of the proceedings *are in favor of the employee*.

2) Defines for these purposes, "involuntary leave of absence" to include, but not limited to, a compulsory leave of absence or suspension.

3) Provides that these provisions shall not reduce any entitlement to paid leave or replace any relevant procedures under any other law.

4) Maintains that these provisions must apply to districts that have adopted the merit system in the manner and effect as if it were a part of the merit system, as specified.

COMMENTS

1. Background: History of the Establishment of Merit Systems in CA Public Schools

The Assembly Public Employment and Retirement Committee provides a brief history of the establishment of merit systems, important for the purposes of this discussion. They note:

""Merit systems," also commonly referred to as district "civil service systems" relating to public education in California are independent of the school or community college district's governing board where the Personnel Commission of a "merit system" district is responsible for administering the hiring and retention of classified school employees through a statutory framework pursuant to the Education Code. In California, there are approximately 100 of these systems that currently exist.

Merit systems derive from the late 19th and early 20th century civil service movement that sought to curtail the "spoils" resulting from political patronage in the system whereby elected political candidates rewarded their supporters with government positions. These systems arose out of a particularly egregious school board decision to discharge over 700 classified employees in the 1930s upon the new board's election.

This history strongly suggests that the Legislature intended the merit system framework as a means to protect classified employees from local political mistreatment at a time prior to public sector collective bargaining, and in which such systems continue to presently exist.

Generally, in the public education employment arena, districts that have not formally adopted the merit system are referred to as "nonmerit" districts. For such districts, employee disciplinary and termination matters are not addressed by a personnel commission. Although this bill proposes to amend existing law, it maintains provisions in existing law such that, "[it must] apply to districts that have adopted the merit system in the manner and effect as if it were a part of the [merit system]."[1]

2. Need for this bill?

As noted under existing law, a district is prohibited, subject to certain specified exceptions, from suspending, demoting, or dismissing without pay or a reduction in pay, a permanent classified employee, if the employee timely requests a hearing on charges against the employee and before a decision is rendered on the matter relating to criminal misconduct, as defined. Additionally, *for districts operating under the merit system*, existing law specifies that if the employee is acquitted, or the charges are dismissed against the employee, the school district must reimburse the employee for the cost of the bond (required per Education Code Section 44940.5) upon the employee returning to service in the school district. If, however, the employee does not elect to furnish a bond or other acceptable security, and if the employee is acquitted or the charges against the employee are dismissed, the district *must*

[1] See subdivision (c) of Sections 45190 and 88190, respectively, of this bill.

pay the employee their full compensation for the period of the compulsory leave upon their return to service in the school district, among other provisions.

This bill addresses similar situations for classified employees of *nonmerit* school and community college districts by protecting the employee's compensation interests pending the outcome of a hearing relating to criminal charges, criminal investigation, or administrative delay for necessary job-related administrative decisions while the employee is on an involuntary leave of absence. This bill defines "involuntary leave of absence" for its purposes to include, but is not limited to, "a compulsory leave of absence or suspension," in which the full payment of compensation for the period of the involuntary leave of absence is predicated on the outcome of a criminal offense determination, investigation, or administrative delay in an administrative decision *in favor of the employee*.

According to the author, "Addressing this disparity is a fairness issue for classified employees in non-merit districts. In these circumstances, this right to be compensated is already afforded to classified employees in merit districts. Additionally, classified employees in both merit and non-merit districts are not now but should be paid for time missed in all other cases where charges are not brought, dismissed, or the employee is acquitted. AB 472 will clarify that if a school district places an employee on an involuntary leave of absence during the period an employee is charged with a criminal offense, is under investigation, or is waiting due to administrative delay for necessary job-related administrative determinations, then upon the conclusion of the proceedings in favor of the employee and the employee's return to service in the school district, the school district shall pay the employee's total compensation for the period of the involuntary leave of absence."

3. Proponent Arguments:

According to the co-sponsors of the measure, AFSCME and the California School Employees Association, "Under current law, only merit school districts must pay a classified employee their full compensation for a period of involuntary leave of absence upon the employee's return following acquittal or dismissal of certain charges (Ed Code sections 45304, 44940.5). Due to a 1968 court ruling, if a non-merit school district places an employee on involuntary leave of absence for the same offense, it is unconstitutional to compensate employees upon their return to service absent a preexisting rule adopted by the school board or statutory authorization.

Addressing this disparity is a fairness issue for classified employees in non-merit districts. This right to be compensated in these circumstances is already afforded to classified employees in merit districts. Additionally, classified employees in both merit and non-merit districts should be compensated for time missed in all other cases where charges are not brought, dismissed or the employee is acquitted. Additionally, classified employees are also often not compensated for time missed due to administrative delays that are at no fault of the employee and prevent them from having the requisite certification or paperwork to perform their duties.

AB 472 will clarify that if a school district places an employee on an involuntary leave of absence during the period an employee is charged with a criminal offense, is under investigation, or is waiting due to administrative delay for necessary job-related administrative determinations, then upon the conclusion of the proceedings in favor of the

employee and the employee's return to service in the school district, the school district shall pay the employee's full compensation for the period of the involuntary leave of absence."

4. Opponent Arguments:

None received.

5. Staff Comments:

As noted above under existing law, the current provisions governing classified employees of merit system districts provides that when an employee of the school district or county of education is charged with a mandatory leave of absence offense, the governing board of the school district must immediately place the employee on a compulsory leave of absence for up to 10 days after the date entry of the judgment in the proceedings, and once the employee is placed on such leave: (EDC §45304)

a) The employee must continue to be paid their regular salary during the period of the leave if they provide a suitable bond or other security interest to the school district or governing board, as applicable.
b) If the employee is *acquitted* of the offense, or the charges are *dismissed* against the employee, the school district must reimburse the employee for the cost of the bond upon the employee returning to service in the school district.
c) If the employee does not elect to furnish a bond or other acceptable security, and *if the employee is acquitted of the offense, or the charges against the employee are dismissed without guilt* being established, the district must pay the employee their full compensation for the period of the compulsory leave upon their return to service in the school district, among other provisions. (EDC §44940.5)

The provisions of this bill would require, for nonmerit systems, if a school or community college district places an employee on an involuntary leave of absence during the period in which the employee is charged with a criminal offense; under criminal investigation; or, waiting due to administrative delay for necessary job-related administrative determinations, to pay the employee the employee's full compensation for the period of the involuntary leave of absence upon the employee's return to service for the district, if the conclusion of the proceedings ***are in favor of the employee.*** *The committee may wish to consider the need for uniformity between provisions of the two systems.*

6. Prior Legislation:

AB 2413 (Carrillo, Chapter 913, Statutes of 2022) prohibits K-12 and community college districts from suspending without pay, suspending with a reduction in pay, demoting, or dismissing a permanent classified employee who timely requests a hearing on the charges against the employee before the district or hearing officer renders a decision on the matter except for certain conduct as specified.

SUPPORT

American Federation of State, County, and Municipal Employees (Co-Sponsor)
California School Employees Association (Co-Sponsor)

California Federation of Teachers
California Labor Federation
California Teachers Association
Faculty Association of California Community Colleges
SEIU California

OPPOSITION

None received

-- END --

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

Bill No:	AB 524	**Hearing Date:**	July 12, 2023
Author:	Wicks		
Version:	June 29, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Discrimination: family caregiver status

KEY ISSUE

Should the Legislature prohibit employment discrimination because of *family caregiver status* by expanding the protected characteristics listed in the anti-discrimination provisions of the Fair Employment and Housing Act (FEHA) to include "family caregiver status," as defined?

ANALYSIS

Existing law:

1) Establishes the Fair Employment and Housing Act (FEHA), which protects the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of 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 military and veteran status. (Gov. Code §12921)

2) Makes it an unlawful employment practice, under 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, reproductive health decisionmaking, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status. (Government Code §12940)

3) Makes it unlawful, under the California Family Rights Act (CFRA), for an employer to refuse to grant a request by an employer with more than 12 months service to take up to 12 weeks of paid or unpaid leave in any 12-month period for family care and medical leave, as defined. Defines "family and medical leave," among other individuals, as leave to care for a "designated person." (Government Code §12945.2)

4) Defines "designated person" to mean any individual related by blood or whose association with the employee is the equivalent of a family relationship. The designated person may be identified by the employee at the time the employee requests the leave. An employer may limit an employee to one designated person per 12-month period for family care and medical leave. (Government Code §12945.2)

5) Establishes the Civil Rights Department (CRD) to, among other things, enforce California's civil rights laws and protect Californians from discrimination in employment, housing,

businesses, state-funded programs, and from bias-motivated violence, and from human trafficking. (Government Code §12930)

6) 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. (Gov. Code §12926)

This bill:

1) Expands the protected characteristics under FEHA's anti-discrimination provisions in employment to include family caregiver status.

2) Defines "family caregiver status" to mean a person who contributes to the care of one or more family members.

3) Defines "family member" to mean a spouse, child, parent, sibling, grandparent, grandchild, domestic partner, or any individual previously identified as a "designated person" under Government Code Section 12945.2.

4) Provides that nothing in these provisions relating to discrimination on account of family caregiver status shall be interpreted as creating any new obligation for an employer to provide special accommodations because of family caregiver status. Specifies that this paragraph shall not be construed to diminish any right that is otherwise provided under this part or any other local, state, or federal law.

COMMENTS

1. Background: Family Caregiving Statistics

Between the cost of living in California and high inflation, many working families are struggling. A world where most two-parent households could afford to have one parent in the workforce while the other cared for children or other family members is a concept of the past. Balancing the demands of a career while caring for family members is especially challenging in a post COVID-19 world where technology and employer demands have created a 24/7 work mentality.

According to the U.S. Department of Labor, roughly 60 percent of two-parent households with children under age 18 have both parents working[1] - a reality that has significant impacts on both employees and their employers. Moreover, more than 1 in 6 Americans working full-time or part-time report assisting with the care of an elderly or disabled family member, relative, or friend[2] and over 1 in 12 employed adults are caring for both children and elderly

[1] Bureau of Labor Statistics, The Department of Labor, "Employment in Families With Children in 2016," available at https://www.bls.gov/opub/ted/2017/employment-in- families-with-children-in-2016.htm.
[2] Bureau of Labor Statistics, The Department of Labor, "Unpaid Eldercare in the United States--2017-2018 Summary," available athttps://www.bls.gov/news.release/elcare.nr0.htm

or disabled adults.[3] Most employees will have caregiving responsibilities at some point in their professional lives with women being disproportionately responsible for providing care: mothers with children are employed at a rate nearly 20 percent lower than fathers with children,[4] and women are responsible for 58 percent of elder caregiving.[5]

The Senate Judiciary Committee analysis writes, "The term "sandwich generation" has been coined to describe individuals—mostly women—who have caregiving obligations to both children and parents.[6] The exact number of individuals with these dual caretaking obligations is unclear, but estimates put the number in the millions;[7] one study found that about 12 percent of parents are caring for both at least one child under 18 while also providing unpaid care for an adult,[8] and another found that 23 percent of parents have a parent age 65 or older and are either raising at least one child under 18 or providing financial support to an adult child.[9] Sandwich generation members report making financial and career sacrifices to be there for their loved ones, including reducing working hours, increasing expenses, or leaving a job entirely.[10]

2. Protections in Existing Law:

As noted under existing law above, California's Fair Employment and Housing Act (FEHA) protects the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of 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 military and veteran status. FEHA also makes it an unlawful employment practice 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 these specified characteristics.

As noted by the author, "Family caregiver discrimination occurs when an employer takes a negative employment action against an employee based on their status as a caregiver. Employment actions—like termination, refusal to hire, or demotion—may be based on biases about how workers who are caregivers will or should act, without regard to the workers' actual performances or preferences. Mothers and fathers of young children, pregnant and breastfeeding people, and employees with aging parents or sick spouses or partners may encounter caregiver discrimination."

---

[3] Pew Research Center, "More than one-in-ten U.S. parents are also caring for an adult," available at https://www.pewresearch.org/wp- content/uploads/2018/11/FT_18.11.29_MultiGenCare_Tables_pdf.pdf

[4] United States Bureau of Labor Statistics, news Release, Employment Characteristics of Families—2022 (Apr. 2023), *available at* https://www.bls.gov/news.release/pdf/famee.pdf.

[5] United States Bureau of Labor Statistics, Economic News Release, Unpaid Eldercare in the United States—2017-2018 Summary, *supra*.

[6] *E.g.*, Chang, *The sandwich generation is changing. The stress remains*. Washington Post (Mar. 22, 2023), https://www.washingtonpost.com/parenting/2023/03/22/caregivers-sandwich-generation/.

[7] Grose, *'It's Pretty Brutal': The Sandwich Generation Pays a Price*, N.Y. Times (Feb. 18, 2020), https://www.nytimes.com/2020/02/11/parenting/sandwich-generation-costs.html.

[8] Livingston, *More than one-in-ten U.S. parents are also caring for an adult*, Pew Research Center (Nov. 29, 2018), https://www.pewresearch.org/short-reads/2018/11/29/more-than-one-in-ten-u-s-parents-are-also-caring-for-an-adult/.

[9] Horowitz, *More than half of Americans in their 40s are 'sandwiched' between an aging parent and their own children*, Pew Research Center (Apr. 8, 2022), https://www.pewresearch.org/short-reads/2022/04/08/more-than-half-of-americans-in-their-40s-are-sandwiched-between-an-aging-parent-and-their-own-children/.

[10] *'It's Pretty Brutal': The Sandwich Generation Pays a Price*, *supra*.

There are situations where our existing anti-discrimination provisions of law could potentially protect someone experiencing this type of "family caregiving" discrimination. For example, a mother who is passed up for an earned promotion because of perceived limitations on her schedule due to caregiving could potentially file a claim for discrimination due to gender. However, according to the sponsors, cases are not always clear and nothing in existing law explicitly addresses discrimination for caregiving. Sponsors shared, as an example, the story of a firefighter father who got divorced and took custody of his children. Subsequently, he was passed up for a promotion and felt that it was an act of discrimination because of the perception that his parental duties would interfere with his work.

This bill attempts to fill this gap by ensuring that employees who serve as caregivers do not experience discrimination in the workplace based solely on these responsibilities. By adding "family caregiver status" to FEHA, this bill would make it unlawful to refuse to hire, terminate, or take other adverse actions against an employee or potential employee because they are a caregiver. It is important to note that simply being a member of a class does not create a claim; the employee would have to prove the suffered adverse action when submitting a claim (with the Civil Rights Department) or pursuing a civil action against an employer.

Recent amendments to the bill, taken in Senate Judiciary Committee when the bill was heard on June 29, 2023, clarify that nothing in these provisions (adding anti-discrimination protections on account of family caregiver status to FEHA) shall be interpreted as creating any new obligation for an employer to provide special accommodations because of family caregiver status. These amendments also specify that this clarification shall not be construed to diminish any right that is otherwise provided under FEHA or any other local, state, or federal law. As noted by the Senate Judiciary Committee analysis, "To be clear, this bill is targeted at ending discrimination based on stereotypes and misguided assumptions about how caretakers will act on the job; it does not create any new requirement for employers to accommodate caregivers once they have been hired, promoted, etc."

3. Need for this bill?

According to the author, "AB 524 prohibits discrimination against employees based on their status as a family caregiver. In a time when employees are struggling to balance their jobs and caring for their families, disparate treatment because of their status as a caregiver should not be a reason for termination or other adverse employment action.

Family caregiver discrimination claims are often addressed by other existing laws - like those prohibiting discrimination because an employee has a family member with a disability, or prohibiting retaliation for taking family and medical leave. Adding family caregiver status to existing discrimination law would provide important clarification to employers that family caregiver status is protected by law.

Alaska, Delaware, Minnesota, and the State of New York have enacted similar statutes, along with close to 200 local jurisdictions throughout the country. It's time for California to join them by explicitly protecting California's family caregivers in the workplace."

4. Proponent Arguments:

According to the sponsors of the measure, "Caregiver bias generally stems from assumptions about how caregivers will act (such as mothers will prioritize their families over work) or how they should act (such as fathers should not take time off from work to care for their children). Most commonly, employers assume caregivers will not be committed to their jobs, and therefore are not as valuable. These assumptions affect personnel decisions, including who gets hired, laid off, terminated, hired, and promoted."

They note that, "Family caregiver discrimination affects employees of every income level, race, gender, and industry. Working mothers and pregnant people, though, are most likely to experience this type of discrimination, with low wage earners and people of color disproportionately impacted. One study found mothers were 79% less likely to be recommended for hire, half as likely to be promoted, and offered an average of $11,000 less in salary for the same position as similarly qualified non-mothers."

Furthermore, they argue that, "Caregiver discrimination even occurs at the hiring stage, where research shows that many employers are biased against job applicants who have temporarily stayed at home with their children. Research shows that adverse treatment continues through employment. For example, mothers of young children often report that they are chosen first for layoffs, while less-senior workers are chosen to stay on. They find they are passed over for promotion or have job offers rescinded when companies learn about their caregiving responsibilities. Fathers who take paternity leave are often criticized or stigmatized for taking time off work. And employees who have new eldercare responsibilities are suddenly hyper-scrutinized in a way they never were before."

Additionally, they write, "Recent amendments clarify that nothing in this section shall be interpreted as creating any new obligation for an employer to provide "special accommodations" because of family caregiving status, except as otherwise provided under local, state, or federal law. The term "special accommodations" and the savings clause in this provision are used to avoid any conflation with or negative impact on existing laws governing an employee's right to reasonable accommodations under the Fair Employment and Housing Act (FEHA). For example, in *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal.App.5th 1028, the Second District Court of Appeal stated that Section 12940(m) of the FEHA, "may reasonably be interpreted to require accommodation based on the employee's association with a …disabled person,"11 Thus, in some instances, the FEHA may already require employers to provide family caregivers with accommodations. AB 524 therefore clarifies that while employers may not have any new obligation to provide special accommodations based on family caregiver status, that does not diminish an employee's existing right to an accommodation under the FEHA or any other local, state, or federal law."

5. Opponent Arguments:

The measure is opposed by a coalition of employer associations, including the California Chamber of Commerce, who argues that the bill creates a broad new protected class under FEHA. Specifically, they argue that, "family caregiver status" is extremely broad and includes, "any worker who "contribut[es] to the care of one or more family members." A "family member" is not limited to an actual family member. Rather, it also includes any person who is designated by the employee. This could include a neighbor or an employee's child's friend. Every employee could arguably fall into the category of a family caregiver.

Proponents of AB 524 claim that adding family caregiver status to FEHA is a simply a "clarification" of existing laws, but that is not true. AB 524 is a significant expansion of FEHA and has been rejected by this Legislature for the last two years."

Additionally, they argue, "because whether an employee contributes to the care of another is a subjective determination, the employer has no ability to dispute an employee designating themselves as having family caregiver status. Any dispute would open the employer up to costly litigation. Further, adding this broad, new classification to the list under FEHA would limit an employer's ability to enforce employment policies, including attendance policies. Any action taken by the employer could be challenged as discrimination based on "family caregiver status.""

Furthermore, they believe that this bill creates a de facto accommodation requirement, arguing, "if an employee requests a schedule change or time off that is denied and they subsequently violate an attendance policy or are terminated for refusing to work a different schedule, they will surely sue alleging discrimination." They cite, as an example, a court case (*Castro-Ramirez v. Dependable Highway Express, Inc.*, 2 Cal. App. 5th 1028 (2016)) in which the plaintiff had requested a schedule change due to his son's disability. "The schedule change was not approved and the plaintiff refused to work the other schedule, resulting in termination. On appeal, the plaintiff did not raise whether he was entitled to a reasonable accommodation. Instead, his claim was that he had been discriminated against. The court agreed that the discrimination claim could move forward even if there was no statutory duty to accommodate because the accommodation issue was "significantly intertwined" with the prohibition against discrimination. (*Id*. at 1038-39, 1046)" They argue that trial attorneys will surely read this bill as requiring the same outcome in which rejecting a caregiver's accommodation request is discriminatory even if there is no explicit legal duty to provide an accommodation.

Additionally, opponents argue that this bill exposes employers, including small businesses, to costly litigation due to its private right of action. They note that, "liability includes compensatory damages, injunctive relief, declaratory relief, punitive damages, and attorney's fees." Lastly, the coalition argues that if the Legislature finds existing leave laws as being insufficient, rather than imposing new burdens on employers it should provide more flexible work options to workers by revising California's overly rigid wage and hour laws that prohibit workplace flexibility. They argue, "Between litigation exposure and forced accommodations, AB 524 will increase the cost of doing business in California and the costs of goods and services."

6. Double Referral:

This bill was double referred to Senate Judiciary and Labor, Public Employment and Retirement Committees.

7. Prior Legislation:

AB 2182 (Wicks, 2022) was similar to this bill in that it would have expanded the list of protected characteristics under FEHA to include "family responsibilities," as defined, but also would have required an employer to make accommodations for persons with "family responsibilities" to tend to obligations arising from specified circumstances involving those responsibilities. The bill was held in the Assembly Appropriations Committee.

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

AB 1119 (Wicks, 2021) was substantially similar to AB 2182 and included both the FEHA anti-discrimination provisions to include an applicant or employee's family responsibilities and would have required an employer to engage in an interactive process to reasonably accommodate such responsibilities that are known to the employer. The bill was held in the Assembly Appropriations Committee.

SB 404 (Jackson, 2013) would have added "familial status" to the protected categories of the employment provisions of the Fair Employment and Housing Act (FEHA). This measure died in the Assembly Appropriations Committee.

SUPPORT

California Employment Lawyers Association (Co-Sponsor)
CA Work & Family Coalition (Co-Sponsor)
Equal Rights Advocates (Co-Sponsor)
Legal Aid at Work (Co-Sponsor)
AARP
Access Reproductive Justice
Alzheimer's Greater Los Angeles
Alzheimer's Orange County
Alzheimer's San Diego
American Association of University Women - California
Association of California Caregiver Resource Centers
Association of Regional Center Agencies
BreastfeedlLA
California Alliance for Retired Americans
California Breastfeeding Coalition
California Calls
California Catholic Conference
California Coalition on Family Caregiving
California Commission on Aging
California Immigrant Policy Center
California Pan - Ethnic Health Network
California Partnership to End Domestic Violence
California Rural Legal Assistance Foundation, INC.
California School Employees Association
California Teachers Association
California WIC Association
California Women Lawyers
California Women's Law Center
Caring Across Generations
Center for Law and Social Policy (CLASP)
Child Care Law Center
Citizens for Choice

COLAGE
Consumer Attorneys of California
Disability Rights California
Family Caregiver Alliance (FCA)
Family Values @ Work
Family Violence Appellate Project
Friends Committee on Legislation of California
Futures Without Violence
GRACE - End Child Poverty in California
Human Impact Partners
Jewish Center for Justice
JTMW LLC
Justice in Aging
LA Best Babies Network
LA Raza Centro Legal
Lawyers' Committee for Civil Rights of The San Francisco Bay Area
Los Angeles Alliance for A New Economy
Lutheran Office of Public Policy - California
Mujeres Unidas Y Activas
NARAL Pro-choice California
National Alliance on Mental Illness (NAMI-CA)
National Association of Social Workers, California Chapter
National Council of Jewish Women CA
National Council of Jewish Women Los Angeles
National Domestic Workers Alliance
National Multiple Sclerosis Society
Orange County Equality Coalition
Our Family Coalition
Parent Voices California
Public Counsel
Restaurant Opportunities Center of The Bay
Rising Communities (formerly Community Health Councils)
Santa Clara County Wage Theft Coalition
SEIU California
TechEquity Collaborative
Thai Community Development Center
The Restaurant Opportunity Center of The Bay
United Food and Commercial Workers, Western States Council
Women's Foundation California
Worksafe

OPPOSITION

Acclamation Insurance Management Services
Allied Managed Care
Associated General Contractors
Association of California Healthcare Districts
Auto Care Association
Brea Chamber of Commerce

California Apartment Association
California Association of Joint Powers Authorities
California Association of Sheet Metal & Air Conditioning Contractors National Association
California Association of Winegrape Growers
California Bankers Association
California Beer and Beverage Distributors
California Building Industry Association
California Business and Industrial Alliance
California Business Properties Association
California Chamber of Commerce
California Employment Law Council
California Farm Bureau
California Food Producers
California Grocers Association
California Hispanic Chambers of Commerce
California Hospital Association
California Hotel & Lodging Association
California Landscape Contractors Association
California Manufacturers and Technology Association
California New Car Dealers Association
California Railroads
California Rental Housing Association
California Restaurant Association
California Retailers Association
California Retailers Association
California State Council of The Society for Human Resource Management (CALSHRM)
Carlsbad Chamber of Commerce
CAWA - Representing the Automotive Parts Industry
Chino Valley Chamber of Commerce
Citrus Heights Chamber of Commerce
Civil Justice Association of California
Clovis Chamber of Commerce
Coalition of California Chambers – Orange County
Coalition of Small and Disabled Veteran Businesses
Construction Employers' Association
Corona Chamber of Commerce
Danville Area Chamber of Commerce
El Dorado Hills Chamber of Commerce
Encinitas Chamber of Commerce
Exeter Chamber of Commerce
Family Business Association of California
Family Winemakers of California
Flasher Barricade Association
Folsom Chamber of Commerce
Fontana Chamber of Commerce
Fountain Valley Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gilroy Chamber of Commerce

Glendora Chamber of Commerce
Greater Bakersfield Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chambers of Commerce
Greater San Fernando Valley Chamber of Commerce
Hollywood Chamber of Commerce
Housing Contractors of California
Imperial Valley Regional Chamber of Commerce
Kern County Hispanic Chamber of Commerce
LA Cañada Flintridge Chamber of Commerce
LA Verne Chamber of Commerce
Laguna Niguel Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce
Los Angeles Area Chamber of Commerce
Mission Viejo Chamber of Commerce
Murrieta Wildomar Chamber of Commerce
National Federation of Independent Business (NFIB)
Newport Beach Chamber of Commerce
North Orange County Chamber of Commerce
North San Diego Business Chamber
Oceanside Chamber of Commerce
Official Police Garages of Los Angeles
Orange County Business Council
Palos Verdes Peninsula Chamber of Commerce
Paso Robles Chamber of Commerce
Pleasanton Chamber of Commerce
Plumbing-Heating-Cooling Contractors Association of California
Public Risk Innovation, Solutions, and Management (PRISM)
Rancho Cordova Area Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego East County Chamber of Commerce
San Diego Regional Chamber of Commerce
San Gabriel Valley Economic Partnership
San Juan Capistrano 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
Santa Rosa Metro Chamber of Commerce
Santee Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
South County Chambers of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tulare Chamber of Commerce

Vista Chamber of Commerce
Walnut Creek Chamber of Commerce
West Ventura County Business Alliance
Western Car Wash Association
Western Growers Association
Wilmington Chamber of Commerce
Wine Institute
Yorba Linda Chamber of Commerce

-- END --

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

Bill No:	AB 520	**Hearing Date:**	July 12, 2023
Author:	Santiago		
Version:	June 21, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Employment: public entities

KEY ISSUE

Should joint and several liability provisions of existing law, which make individuals or business entities that contract out for property services or long-term care industries jointly liable for contracted workers unpaid wages, be extended to public entities contracting for such services?

ANALYSIS

Existing law:

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

2) Requires the LC and authorized deputies and representatives, upon the filing of a claim by an employee, as specified, to, among other things, take assignments of:
   a) Wage claims and incidental expense accounts and advances.
   b) Mechanics' and other liens of employees.
   c) Claims based on "stop orders" for wages and on bonds for labor.
   d) Claims for damages for misrepresentations of conditions of employment.
   e) Claims for penalties for nonpayment of wages.
   f) Claims for vacation, severance, or other supplemental compensation, as specified.
   g) Claims for loss of wages from discharge from employment for the garnishment of wages.
   h) Claims for loss of wages as the result of demotion, suspension, or discharge from employment for lawful conduct occurring during nonworking hours away from the employer's premises. (Labor Code §96)

3) Provides that any individual or business entity that contracts for services in the property services or long-term care industries is *jointly and severally liable* for any unpaid wages, including interest, where the individual or business entity has been provided notice, by any party, of any proceeding or investigation by the LC in which the employer is found liable for those unpaid wages, to the extent the amounts are for services performed under that contract, as specified. (Labor Code §238.5 (a)(1))

4) Requires an employer that contracts to provide services in the property services or long-term care industries to, prior to entering into such a contract, provide written notice to the other

party to the prospective contract of any unsatisfied final judgments against the employer for nonpayment of wages, as specified. (Labor Code, § 238.5 (c))

5) Defines "property services" as janitorial, security guard, valet parking, landscaping, and gardening services. (Labor Code § 238.5 (e)(1))

6) Defines "long-term care" as the operation of a skilled nursing facility, intermediate care facility, congregate living health facility, hospice facility, adult residential facility, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, continuing care retirement community, home health agency, or home care organization. (Labor Code §238.5 (e)(2))

7) Provides that these joint and several liability provisions do not apply to unpaid wages owed to employees covered by a bona fide collective bargaining agreement, if the agreement expressly provides for wages, hours of work, working conditions, a process to resolve disputes concerning nonpayment of wages, and a waiver of the joint and several liability provided by this section. (Labor Code, § 238.5 (b).)

8) Requires an employer that contracts to provide services in the property services or long-term care industries to provide, within 30 days of the entry of the judgment, written notice of any unsatisfied final judgments against the employer for nonpayment of wages to any parties with which the employer is presently under contract for these services; and specifies that failure of the employer to provide such notice shall not be a defense to the joint and several liability requirements. (Labor Code, § 238.5 (d))

This bill:

1) Extends the above-described joint several liability provisions to public entities that contract for property services or long-term care industries.

2) Provides that any "public entity" that hires contractors for services in the property services or long-term care industries, as defined, is jointly and severally liable for any unpaid wages if they have been notified by any party of an investigation by the Labor Commissioner (LC) in which the contractor employer is found liable for those unpaid wages, to the extent that the amounts are for services performed under that contract.

3) Defines "public entity" as the state, a city, county, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state.

4) Finds and declares that joint and several liability for unpaid wages is a law of general application that applies to all industries in both the private and public sectors, and therefore does not interfere with a locality's ability to set wages and is a matter of statewide concern.

COMMENTS

1. Background: Contracting for Property Services

According to a 2022 report by the UCLA Labor Center, "About 37% of private sector janitors in California are subcontracted, meaning that they are employed by building services

companies that contract with building owners, managers, and tenants to provide janitorial services, not by the owners or tenants of the buildings themselves. The estimate for subcontracted janitors also includes janitors who clean government buildings, but are employed by a building services company that contracts with the governmental entity that controls the buildings where the janitors work. In such a scenario, the janitor's employer of record is the private sector building services company, not the governmental entity."[1]

Additionally, the report noted "Since the janitorial services industry has very few barriers to entry and requires minimal special skills and equipment, the number of small undifferentiated janitorial companies has dramatically grown, outpacing the number of cleaning contracts that are available. This has created a highly competitive market, in which the primary source of competition is price. As such, building services companies often lower wages for workers and violate minimal standards and labor laws to remain competitive in this environment."[2]

As noted above, existing Labor Code section 238.5 [SB 588 (De León, Chapter 803, Statutes of 2015] requires, among other things, that any individual or business entity that contracts for services in the property services or long-term care industries to be jointly and severally liable for any unpaid wages, as specified. Public entities who contract for the same services are not currently included under these provisions and, therefore, not held jointly and severally liable for owed wages of contracted employees. The bill will replicate existing law to hold public entities jointly liable for wage theft violations of property services workers in public spaces.

2. Need for this bill?

According to the author, "Private-sector property service workers are an essential part of California's workforce, yet despite playing a crucial role in our economy, they are some of the most vulnerable and exploited workers in the service industry. Public entities contract out this work to the lowest bidder and an array of unaccountable service providers, which perpetuates the worst of the worst employment practices: wage theft, retaliation, harassment, and even assault. AB 520 would hold public entities jointly liable for wage theft committed by their property service contractors. Under current law, private entities are jointly liable for wage theft committed by property service companies. In order to discourage exploitative employment practices across the entire industry, public entities must be held equally accountable. AB 520 also provides access for the purposes of workplace health and safety training to help protect the workers who keep our public spaces clean and safe."

3. Proponent Arguments:

The sponsors of the measure, SEIU California, argues that this bill will discourage public entities from contracting with property service companies that commit wage theft by applying existing joint liability laws to public entities. They write, "Under existing law, Labor Code § 238.5, a private business that contracts for property services is jointly liable for the wage theft violations of the service contractor. However, public entities who contract for the same services are not jointly liable. Over the past few decades, public employers have shifted from direct employment to contracting with private businesses for property services.

[1] Hayes, Herrera, Palma, and Aaron. *Profile of Janitorial Workers in California*. UCLA Labor Center and the Maintenance Cooperation Trust Fund, August 2022.
[2] Ibid.

The property service industry includes some of the lowest-paid workers who are especially vulnerable to wage theft, sexual harassment, and workplace injuries. The subcontracted nature of the janitorial industry fuels unfair competition by awarding contracts to businesses with the lowest labor costs. Public entities are no exception to this practice.

When public entities contract out property services, they eliminate any responsibility to protect workers from wage theft or ensure safe working conditions. As a result, property service workers employed by private companies are likelier to experience workplace violations, including wage theft, sexual harassment, and assault. Contracting out property services to reduce costs rewards exploitative businesses that use wage theft to keep labor costs low. This practice doesn't just hurt workers and their families; it drives down working conditions for every worker due to unfair competition. AB 520 would discourage public entities from perpetuating the exploitative practices of the property services industry by holding public entities jointly liable for wage theft violations."

4. Opponent Arguments:

None received.

5. Prior Legislation:

SB 588 (De León, Chapter 803, Statutes of 2015) requires, among other things, that any individual or business entity that contracts for services in the property services or long-term care industries to be jointly and severally liable for any unpaid wages, as specified.

SUPPORT

SEIU California (Sponsor)
ACCE Action
Alliance San Diego
American Friends Service Committee
Building Skills Partnership
California Labor Federation, AFL-CIO
CSA San Diego County
Espacio Migrante
LAANE
Santa Clara County Wage Theft Coalition
Working Partnerships USA

OPPOSITION

None received

-- END --

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

Bill No:	AB 636	**Hearing Date:**	July 12, 2023
Author:	Kalra		
Version:	May 11, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Employers: agricultural employees: required disclosures

KEY ISSUE

Should the legislature require agricultural employers to provide employees at the time of hire, information on the existence of a federal or state disaster declaration applicable to the county or counties where the employee will be employed if the emergency or disaster may affect the employee's health and safety during employment?

Should the Legislature require an H-2A visa employer to provide an employee, on their first day of work, the notice of basic employment related information with a separate section in Spanish, and if requested by the employee, in English, describing an agricultural employee's rights and protections under California law.

ANALYSIS

Existing Federal Law:

1) Establishes the federal H-2A program allowing U.S. employers or agents who meet specific regulatory requirements for foreign nationals to fill temporary agricultural jobs. Among other things, existing federal law specifies that as a condition for approval of such a petition, the U.S. Department of Labor Secretary must certify:

    a. There are not sufficient domestic persons who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition, and

    b. The employment of the foreign agricultural worker will not adversely affect the wages and working conditions of those similarly employed in the United States. (8 USC §1101, §1188)

2) Exempts agricultural and related seasonal employees from the Fair Labor Standards Act minimum wage and overtime requirements. (29 USC §213)

Existing State Law:

1) Requires the Division of Labor Standards Enforcement (DLSE) within the Department of Industrial Relations (DIR) to enforce, among other things, wage and hour law, anti-retaliation provisions, and employer notice requirements and vests the Labor Commissioner with the

title of Chief of DLSE. (Labor Code §§79)

2) Establishes the Division of Occupational Safety and Health (CalOSHA) within DIR to protect and improve the health and safety of workers by setting and enforcing standards, providing outreach, education, and assistance, and issuing permits, licenses, and registrations and requires an employer to ensure a safe and healthful workplace by providing, among other things, bathroom access, meal and rest break areas to its employees, and protections against high heat or pesticide exposure. (Labor Code §§6300)

3) Requires that employers, at the time of hire, provide each employee with a written notice, in the language the employer normally uses to communicate employment-related information, containing the following:

    a. The rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any applicable overtime.

    b. Allowances, if any, including meal or lodging.

    c. The regular payday designated by the employer.

    d. The name of the employer, including any "doing business as" names used.

    e. The physical address of the employer's main office or principal place of business, a mailing address, if different, and the telephone number.

    f. The name, address, and telephone number of the employer's workers' compensation insurance carrier.

    g. The right to accrue and use sick leave and file a complaint against an employer that retaliates for the use of sick leave.

    h. Any other information the Labor Commissioner deems material and necessary. (Labor Code §2810.5(a))

4) Specifies that an employer shall notify its employees in writing of any changes to the information in the notice within seven calendar days after the time of the changes, unless one of the following applies:

    a. All changes are reflected on a timely wage statement, as defined.

    b. Notice of all changes is provided in another writing required by law within seven days of the changes. (Labor Code §2810.5(b))

5) Requires the Labor Commissioner to develop a template for employers to comply with Labor Code §2810.5(a) and make that document available to employers.

This bill:

1) Adds to the written notice of basic employment related information provided to an employee at the time of hiring, the existence of a federal or state disaster declaration applicable to the county or counties where the employee will be employed if the emergency or disaster may affect the employee's health and safety during employment.

2) Requires an employer, beginning on March 15, 2024, to give to an H-2A visa employee on their first day of work in California or upon transfer, the notice of basic employment-related information with a separate and distinct section in Spanish, and, if requested by the employee, in English, describing an agricultural employee's additional rights and protections under California law, including but not limited to:

    a. Overtime wage rates;

    b. Pay for piece rate workers;

    c. Transportation travel time compensation when required, including transportation from housing to work sites;

    d. Protections from retaliation for complaints or organizing;

    e. Availability of potable water and handwashing facilities;

    f. Requirements relating to hot weather working conditions and the availability of shade;

    g. Training and necessary equipment and lighting for night work;

    h. Prohibitions against the use of short-handled hoes and limits on hand weeding;

    i. Right to accrue and take sick leave, and;

    j. Right to complain to state or federal agencies and to seek advice from collective bargaining representatives or legal assistance organizations.

3) Authorizes an employer who employs both H2-A and non-H-2A employees at the same time to provide non-H-2A employees with the H-2A notice provided in 2).

4) Specifies that the exemption from the notice requirement for employees covered by a collective bargaining agreement with specified provisions only applies to an H-2A worker if the collective bargaining agreement provides for wage rates of not less than the federal H-2A program wage required to be paid during the contract period.

5) Requires the Labor Commissioner to post on their website by March 1, 2024, the templates for employers to provide to employees upon hire.

6) Makes the following findings and declarations:

   a. In 2011, California's "Wage Theft Prevention Act" was signed into law, requiring *most* employers in California to provide a notice of basic wage and hour information to all employees at the time of hire. In subsequent years, the act was amended to require employers to advise workers of their right to accrue and take sick leave without fear of retaliation and to file a complaint to remedy a violation of that right. The act was also amended to require employers of temporary workers to provide additional business location and contact information because this workforce is seen as uniquely vulnerable to workplace violations.

   b. This [bill] continues the evolution of the notice requirements described above to protect vulnerable workers from a lack of key information about work conditions by placing new requirements on employers of farmworkers who are brought into California for work in agriculture under the federal H-2A agricultural worker visa program.

   c. The notice required by this act is intended to create a California H-2A farmworker legal rights and disclosure requirement that would allow each H-2A farmworker to readily comprehend their employer's obligations under important California law and regulations, equip workers with the knowledge needed to quickly ascertain whether those laws are being complied with in their workplaces, and provide workers with information about how to initiate complaints covering possible violations with state and federal agencies, their collective bargaining representatives, or nonprofit legal assistance organizations that represent farmworkers.

   d. The Legislature finds that the notice required by this act is necessary because more than 43,000 foreign agricultural temporary workers were admitted to California in the 2022 federal fiscal year under the federal H-2A visa program, a number that has grown dramatically in recent years. Many of these farmworkers have never worked in California, and are believed to speak and read little or no English. Fewer still are believed to be familiar with their basic legal rights and remedies under California law, and many are provided false or misleading information about California laws in the federal job order approved for their admissions.

   e. Although all employers of H-2A farmworkers are required to comply with federal, state, and local law, neither the United States Department of Labor nor the Employment Development Department, which both administer the program, require H-2A employers to accurately disclose in writing to H-2A farmworkers any information about fundamental California labor, housing, health and safety, and other laws that afford them greater protections than federal law. Neither the United States Department of Labor, nor the Employment Development Department, require H-2A employers to inform H-2A farmworkers of the existence of either federal or state emergency or disaster declarations that may affect their health and safety during their employment in California. Because of the recent COVID-19 pandemic, the Legislature finds that notice of these declarations is in workers' interests and in

keeping with prior amendments to the important "Worker Right to Know" statute.

COMMENTS

1. Background

The H-2A temporary agricultural program allows agricultural employers who anticipate a shortage of domestic labor to bring nonimmigrant foreign workers to the states to perform seasonal or temporary work. Seasonal employment is tied to a certain time of year, such as an annual cultivation cycle. Employment is of a temporary nature when the employer's need to fill the position with a temporary worker will generally last no longer than a year. For an H-2A visa to be approved, the federal Department of Labor must determine that there are not sufficient able, willing, and qualified U.S. workers available to perform the agricultural labor or services of a temporary or seasonal nature for which an employer desires to hire foreign workers. Additionally, the employer must certify that employment of the H-2A workers will not adversely affect the wages and working conditions of workers similarly employed in the U.S.

Federal law provides worker protections and employer requirements concerning wages and working conditions. The Employment and Training Administration's Office of Foreign Labor Certification is responsible for administering the H-2A program, including reviewing applications and issuing temporary labor certifications. The Wage and Hour Division is responsible for investigating and enforcing obligations applicable to the employment of H-2A workers and workers in corresponding employment, including obligations to offer employment to eligible U.S. workers.

2. Need for this bill

According to the author, "AB 636 will help advise H-2A workers of their rights under California law by ensuring adequate notice on their first day of work or when they are transferred to another employer. The notice shall include information on employment rights such as the right to meal and rest periods, overtime, rest period compensation for piece rate workers, compensable transportation time, prohibited deductions, worker health and safety protections, sexual harassment training, and timely payment of wages.

The written notice would also inform H-2A workers of their right to report a violation of California law, how to report violations, and their right to be free from retaliation. In doing so, AB 636 will create safer, more legally compliant workplaces and reduce any incentive unscrupulous H-2A employers may have to hire workers who they can underpay and mistreat because the workers are not aware of their rights or how to have them enforced."

3. Proponent Arguments

The California Rural Legal Assistance Foundation states "AB 636 simply requires that H-2A employers provide their H-2A farm worker employees with a written notice that pulls together into a single document key information about approximately two dozen California laws and regulations that are not required to be disclosed to them under the federal H-2A visa program, and which often afford them significantly greater protections than federal law.

Recent amendments permit employers to provide non-H-2A employees with either the existing Labor Code Section 2810.5 notice or the new AB 636 notice at the time of hire.

The Need for an Effective California H-2A Farm Worker Legal Rights Disclosure Notice Is Critical in Light of Weak Federal Requirements
Last year, more than 43,000 H-2A farm workers entered California under job orders approved by the U.S. Dept. of Labor (DOL). They worked under written contracts that often created confusion about, as well as misrepresented, fundamental state law protections that applied to these workers.

H-2A workers, once they enter California, are under the near total control of their California employers and have no independent means of informing themselves of their rights here. Given the high degree of misinformation affecting their understanding of fundamental protections, requiring a comprehensive notice of key protections could create more legally compliant workplaces now and in the future.

Deceptive or Misleading H-2A Contracts Approved by US DOL Implicitly Condone Wage Theft and Oppressive Workplace Conditions
Rural legal services programs have recently settled wage theft actions for hundreds of H-2A workers that exceed 3 million dollars. A number of similar legal actions are pending, on behalf of over 6,000 workers, including one major H-2A worker rights case brought by the Division of Labor Standards Enforcement.

These workers have had to seek assistance from legal services law firms or the State of California in order to be paid overtime wages or to recover illegal deductions made for tools or equipment; for charges for meals that were not taken; for meal and rest periods that were denied to them; and for uncompensated travel time pay when riding in vehicles to work sites while under the control of the employer.

When asked by legal services attorneys if they knew that they had the right to be paid for overtime, or to be paid while being transported from the employer's housing to the job when that was required, many H-2A farm workers replied that they were unaware of these rights. And, even when workers were aware that their rights were being violated, many stated that they were afraid to complain because they knew they could be fired and sent back to their country at any time.

AB 636 amends Labor Code Section 2810.5 to Give the Labor Commissioner the Authority to Develop an H-2A Farm Worker Notice to be Provided by their Employers
AB 636 fills a fundamental gap in the federal H-2A visa program's minimal requirements. By failing to require any state law information to be disclosed to farm workers, even if, as in the case of California, its laws are significantly more protective, the federal program puts these vulnerable guest workers at unnecessary risk. Widespread abuses of these workers might be reduced if they got timely, accurate information that allows them to readily understand their California rights. It is expected that AB 636 will give workers ready access to this information in easy to understand Spanish, or English if they request it, and puts them in a position to both understand their rights, but also to seek to vindicate them if violations occur.

Compliance with AB 636's Notice Requirements will be Neither Burdensome nor Costly for the approximately 200 H-2A Employers Now Operating in California

Under AB 636 as introduced, the California Labor Commissioner is required to merge a workers' rights disclosure already required of most employers under Labor Code Section 2810.5 with a new notice that addresses key information pertinent to H-2A farm workers. She is required to post it on her website on March 1, 2024 and H-2A employers will be required to give it to each H-2A farm worker on their first day of work."

4. Opponent Arguments:

None received.

5. Prior Legislation:

AB 857 (Kalra, 2022) would have required H-2A visa employers to provide notice of specified state and federal employment rights in Spanish, and if requested, in English, to all H-2A farm workers on their first day of work or when they are transferred to another employer. This measure was vetoed by Governor Newsom.

SB 1102 (Monning, 2020) would have required employers to include in their written workplace rights notice to all employees, specified information in the event of a federal or state emergency or disaster declaration that may affect their health and safety. Additionally, this bill required employers of agricultural employees coming to work in California under the federal H-2A Program for temporary agricultural workers to give each employee an H-2A employee specific written notice on labor rights and obligations under federal and state law, including notice of emergency or disaster declarations. *This bill was vetoed by Governor Newsom, who stated "While I applaud the intent of this bill to create accessible and easy to understand notifications, this statutory construction departs from previous H2-A notice requirements like those found in Labor Code Section 2810.5 and prevents the agency from amending the template when new laws are passed or new court decisions affect the rights and obligations of H2-A employers and workers."*

AB 469 (Swanson - Chapter 655, Statutes of 2011) required an employer to provide each employee, at the time of hiring, with a notice that specifies the rate and the basis, whether hourly, salary, commission, or otherwise, of the employee's wages.

SUPPORT

California Rural Legal Assistance Foundation (Sponsor)
California Alliance for Retired Americans
California Coalition for Rural Housing
California Food and Farming Network
Californians for Pesticide Reform
California Employment Lawyers Association
California Immigrant Policy Center
California Institute for Rural Studies
California Labor Federation California
Central California Environmental Justice Network
Central Coast Alliance United for a Sustainable Economy
Centro Binacional Para El Desarrollo Indigena Oaxaqueno
Centro de los Derechos del Migrante
Consumer Attorneys of California

Employee Rights Center
Equal Rights Advocates
Farmworker Justice
North Bay Jobs with Justice
Pesticide Action Network
Santa Clara County Wage Theft Coalition
Sunita Jain Anti-Trafficking Policy Initiative (Loyola Law School)
Teamsters Public Affairs Council
UFCW, Western States Council
Women's Employment Rights Clinic (Golden Gate School of Law)
Worksafe

OPPOSITION

None received

-- END --

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

Bill No:	AB 892	**Hearing Date:**	July 12, 2023
Author:	Bains		
Version:	February 14, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Kern County Hospital Authority

KEY ISSUE

Should the Kern County Hospital Authority Act be amended to clarify that all entities controlled, owned, administered, or funded by the Kern County Hospital Authority ((KCHA) be subject to the provisions of the Meyers-Milias-Brown Act (MMBA), the Ralph M. Brown Act (Brown Act), and the California Public Records Act (CPRA)?

ANALYSIS

Existing law:

1) Establishes the KCHA and vests it with authority to manage, administer, and control Kern Medical Center (KMC), and control of other health-related resources in the County of Kern. The sole purpose of KCHA is to operate a hospital, clinics, and provide healthcare services to the entire community. It is operated by an independent Board of Governors as a designated public hospital. (Health and Safety Code (HSC) § 101852 et seq.)

2) Establishes within the enabling KCHA statute, that the MMBA, Brown Act, and the CPRA apply to the KCHA, itself, and that the KCHA is subject to the jurisdiction of the Public Employment Relations Board (PERB), as provided. (HSC § 101855 (b) (3) and (b) (4))

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

4) Establishes the PERB, a quasi-judicial administrative agency, charged with administering the several statewide collective bargaining statutes covering public employees, including the MMBA. (GC § 3541 et seq.)

5) Provides that the people have the right of access to information concerning the conduct of the people's business and, therefore, the writings of public officials and agencies shall be open to public scrutiny. Specifies that any law or rule that limits the public right of access shall be adopted with findings demonstrating the interest protected by the limitation. (Cal. Const. art. I, § 3 (b))

6) Establishes, under the CPRA, that public records are open to public inspection upon request, unless the records are otherwise exempt from public disclosure, among other provisions. (GC § 7920.000 et seq.)

   The CPRA is premised on the principle that, "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state."

7) Establishes, under the Brown Act, requirements relating to public meetings of local government entities and bodies. (GC § 54950 et seq.)

This bill:

1. Requires all entities controlled, owned, administered, or funded by the Kern County Hospital Authority to be subject to the provisions of the Meyers-Milias-Brown Act, the Ralph M. Brown Act, and the California Public Records Act.

2. Provides that if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for state mandated costs shall be made pursuant to the state mandated cost reimbursement process, as specified.

COMMENTS

1. Background

AB 2546 (Salas, 2014) authorized the Kern County Board of Supervisors to establish KCHA to manage, administer, and control the Kern Medical Center, as well as additional programs, facilities, care organizations, physical practice plans, and delivery systems. The Board of Supervisors passed an ordinance establishing the KCHA in October 2015 and in 2016, the KCHA took over management of the Kern Medical Center. Under AB 2546, the KCHA is required to comply with the MMBA, the Brown Act, and the CPRA.

After the KCHA began operating, two private firms – Meridian Healthcare Partners and Cantu Management Group – were brought in to help manage the Kern Medical Center. In addition, the private Kern Medical Surgery Center, LLC (LLC), was created by KCHA in 2016 and it operated under the direction of KCHA and the two private firms.

In May 2022, Service Employees International Union, Local 521 (SEIU 521) filed an unfair practice charge (UPC) with PERB against KCHA. The UPC alleges, among other things, that:

- KCHA owns and governs the LLC.
- The operations of KCHA and the LLC are integrated and their personnel, labor relations, legal representation, and operations management are centralized.
- The LLC's profits and losses are allocated exclusively to KCHA.
- In addition to managing the Kern Medical Surgery Center, the LLC also operates at least five of KCHA's medical clinics.
- The LLC does not adhere to the MMBA, despite being owned and governed by KCHA.

- KCHA interfered with SEIU 521's ability to organize and represent its members, as well as the right of employees to be represented by the union.

In its response, KCHA stated:

- The people SEIU 521 claims were excluded from the bargaining units were not KCHA employees but rather, they were employees of the LLC.
- Although KCHA created the LLC, the LLC is a separate and private legal entity and as such, it is not a public agency subject to the MMBA.

In July 2022, SEIU 521 filed suit against KCHA in Kern County Superior Court, alleging KCHA had committed "repeated and willful violations" of the Brown Act and the CPRA. The suit states, among other things:

- The LLC does not hold public meetings nor post agendas to its meetings 72 hours in advance as required by the Brown Act, does not take official action at open and public meetings, and does not publicly report its actions and the votes of its membership on important actions.
- KCHA has responded to requests for public records related to the LLC by stating the LLC is not a public entity subject to the disclosure requirements of the CPRA.

The KCHA filed several motions to dismiss the case, asserting SEIU 521 did not state a cause of action and gave no legal basis for KCHA to be held responsible for any damages claimed by SEIU 521. In October 2022, the court rejected the requests for dismissal.

The court has scheduled a mandatory settlement conference for September 29, 2023, a final case management conference for October 30, 2023, and, if necessary, a trial for October 30, 2023.

2. Need for this bill?

According to the author,

"AB 892 is a critical reform to ensure KMC is operated in a transparent and public manner. It guarantees that KCHA and its entities are held to the same standards of public disclosure and accessibility as contained in the Brown Act and CPRA. For decades, the Brown Act and CPRA have brought public transparency to public entities, including local agencies. In clarifying that the MMBA applies to all employees of entities controlled, owned, administered, or funded by KCHA, this bill will also guarantee our critical health workforce has a voice on the job. With greater pubic engagement, KCHA will be better positioned to deliver on its promise of high quality, timely, and culturally competent care."

3. Proponent Arguments

According to the sponsor,

"AB 892 will increase public accountability and transparency at the Kern County Hospital Authority (KCHA), a public, local body established to guarantee continued access to quality care at Kern Medical Center and its network of outpatient, community-based clinics and services. Specifically, this bill will guarantee that the provisions of the Ralph M. Brown Act

(Brown Act) and the California Public Records Act (CPRA) are applied to all meetings and records of KCHA and all entities controlled, owned, administered, or funded by the authority. Lastly, this bill will guarantee that the Myers-Milias- Brown Act (MMBA), allowing for the right of county, municipality and other local public employees to join organizations of their own choice and be represented by those organizations in their employment relationships is applied to all employees of entities controlled, owned, administered, or funded by KCHA."

4. **Opponent Arguments:**

None received.

5. **Dual Referral:** The Senate Rules Committee referred this bill to the Senate Governance and Finance Committee and the Senate Labor, Public Employment and Retirement Committee.

6. **Prior Legislation:**

AB 1350 (Salas, Chapter 790, Statutes of 2015) built upon the authority granted to the Kern County Board of Supervisors by AB 2546 to establish the Authority and to transfer the medical center to the separate Authority. The bill made a number of changes to the laws governing the transfer of KMC.

AB 2546 (Salas, Chapter 613, Statutes of 2014) authorized the Kern County Board of Supervisors to establish the Kern County Hospital Authority and specifies the Authority's governance, powers, and procedures.

SUPPORT

Service Employees International Union, California (Sponsor)

OPPOSITION

None received

-- END --

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

Bill No:	AB 938	**Hearing Date:**	July 12, 2023
Author:	Muratsuchi		
Version:	June 21, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Education finance: local control funding formula: base grants: classified and certificated staff salaries

KEY ISSUE

Should the California Department of Education do the following:

1) Update the Salary and Benefits Schedule for the Certificated Bargaining Unit (Form J–90) to include salary data collection for classified school staff, as specified, in the same manner as collected for certificated staff; and,

2) Report, as specified, to the Legislature on school employers' progress in closing the gap between these targets and actual salary scales for classified employees?[1]

ANALYSIS

Existing law:

1. Provides funding to local education agencies (LEAs) principally through the Local Control Funding Formula, which reformed education finance as part of the 2013 Budget Act and was intended simplify how state funding is provided to LEAs and to increase local control of K-12 education, to ensure that student needs drive the allocation of resources, and to increase transparency in school funding. The LCFF also included new requirements for local planning and accountability and a new system of support and intervention for underperforming school districts that do not meet their goals for improving student outcomes. (Education Code § 2574 et seq.)

2. Provides collective bargaining for public school employees through the Educational Employment Relations Act (Government Code 3540 et seq.)

This bill:

1) Establishes new LCFF base and add-on grant targets for fiscal year 2030-31 and states that it is the intent of the Legislature to fully fund the LCFF target base grants in the years preceding the 2030–31 fiscal year and to spend those funds to increase schoolsite staff salaries to close the wage gap at LEAs.

2) Requires the California Department of Education (CDE) to, by July 1, 2024, update the Salary and Benefits Schedule for the Certificated Bargaining Unit (Form J–90) to include

[1] These are the bill's issues for purposes of SLPER jurisdiction. Most of the bill deals with matters under the jurisdiction of the Senate Education Committee.

salary data collection for classified school staff assigned to a schoolsite or sites, in the same manner as collected for certificated staff assigned to a schoolsite or sites; and rename the form as the Salary and Benefit Schedule for the Bargaining Units (Form J–90).

3) Requires, on or before September 1, 2024, and annually thereafter, school districts, county offices of education (COE), and charter schools to complete the Form J–90 for classified and certificated staff assigned to a schoolsite or sites and report the Form J–90 to the CDE.

4) Requires, on or before November 1, 2024, and annually thereafter, the CDE to report to the Legislature on the progress of school districts, COEs, and charter schools in increasing salaries for classified staff assigned to a schoolsite or sites and certificated staff assigned to a schoolsite or sites. Requires this report to include the following:

   a) The change in salary rates for certificated staff as compared to the 2020–21 fiscal year or the 2023–24 fiscal year, whichever year the Form J–90 was filed for first;

   b) The change in salary rates for classified staff as compared to the 2023–24 fiscal year;

   c) The salary rate changes year over year; and

   d) The rate of salary change compared to the rate of yearly inflation as measured by the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year.

COMMENTS

1. Need for this bill?

According to the author,

"AB 938 creates Local Control Funding Formula (LCFF) funding goals with the specific intent of increasing school site staff salaries, in order to close the wage gap that school employees' face compared to similarly educated professionals in other fields, by the 2030-31 school year. AB 938 further expresses legislative intent to establish new LCFF targets to increase school staff salaries by 50% over time.

To ensure this funding is accomplishing the intended goal, the bill will require school employers to report the changes in wages over time.

AB 938 will achieve equitable school site staff salaries by closing the wage gap, and help California recruit and retain qualified school site staff, both certificated and classified, at school districts, charter schools and county offices of education."

2. Proponent Arguments

According to the California Labor Federation,

"AB 938 will achieve equitable school staff salaries by closing the wage gap to help California recruit and retain qualified certificated and classified staff at school districts, charter schools and county offices of education."

3. Opponent Arguments:

None received.

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

5. Senate Education Committee Amendments:

The author agreed in the Senate Education Committee to take the following amendments in this committee:

(1) Change the due date for the annual legislative report on the progress of LEAs increasing staff salaries from November 1 to January 31, and (2) specify that the Form J-90 reporting requirement applies to direct-funded charter schools, and not locally-funded charter schools since the latter are assumed to be schools of a district.

6. Prior Legislation:

AB 1607 (Muratsuchi) of the 2021-22 Session would have, commencing with the 2022-23 school year, required any calculation of ADA for school districts, COE and charter schools to be based on the quotient of the sum of the ADA for the current fiscal year and each of the previous two fiscal years, divided by three. This bill was held in the Assembly Education Committee.

AB 1609 (Muratsuchi) of the 2021-22 Session would have required for the 2022-23 school year, the CDE to use the greater of the ADA from fiscal years 2019-20, 2020-21, 2021-22, or 2022-23 for purposes of apportionment under the LCFF for school districts, COEs, and charter schools.

AB 1614 (Muratsuchi) of the 2021-22 Session would have increased the LCFF base grant amounts, as specified, commencing with the 2022-23 fiscal year. This bill was held in the Assembly Education Committee.

AB 1948 (Ting) of the 2021-22 Session would require, commencing with the 2022–23 fiscal year, numerous changes to the calculation of the LCFF. This bill was held in the Senate Education Committee.

AB 39 (Muratsuchi) of the 2019-20 Session would have increased the school district and charter school LCFF base grant funding targets, and would have created a new grant-add on. This bill was held on the Senate Floor.

SUPPORT

California Federation of Teachers (Co-sponsor)
California Labor Federation (Co-sponsor)

American Federation of State, County and Municipal Employees
Board of Supervisors for The City and County of San Francisco
California Parents for Public Virtual Education
California School Employees Association
California State Council of Service Employees International Union
California Teachers Association
Children Now
San Diego Unified School District
Individual Letters: 1

OPPOSITION

None received

-- END --

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

Bill No:	AB 1136	**Hearing Date:**	July 12, 2023
Author:	Haney		
Version:	May 22, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: State Athletic Commission: mixed martial arts: pension fund

KEY ISSUE

Should the California Athletic Commission (Commission) establish a pension plan for martial artists who engage in mixed martial arts contests in this state?

ANALYSIS

Existing law:

1) Regulates and licenses combat sports under the Boxing Act, or State Athletic Commission Act, administered by the Commission. (Business and Professions Code (BPC) §§ 18600-18887)

2) Defines a professional or amateur boxer or martial arts fighter as one who engages in a boxing or martial arts contest and who possesses fundamental skills in their respective sport. (BPC § 18623)

3) Defines "contest" and "match" synonymously to mean professional and amateur boxing, kickboxing, and martial arts exhibitions, and mean a fight, prizefight, boxing contest, pugilistic contest, kickboxing contest, martial arts contest, or sparring match, between two or more persons, where full contact is used or intended that may result or is intended to result in physical harm to the opponent. (BPC § 18625(a))

4) Defines "martial arts" as any form of karate, kung fu, tae kwon do, kickboxing or any combination of full contact martial arts, including mixed martial arts, or self-defense conducted on a full contact basis where a weapon is not used. Defines "kickboxing" as any form of boxing in which blows are delivered with the hand and any part of the leg below the hip, including the foot. Defines "full contact" as the use of physical force in a martial arts contest that may result or is intended to result in physical harm to the opponent, including any contact that does not meet the definition of light contact or noncontact. (BPC §18627)

5) Requires every promoter who conducts a boxing or martial arts contest or wrestling exhibition and charges admission to, within 72 hours after the determination of the contest or exhibition, give the Commission the following:

    a) A written report showing the amount of the gross receipts, not to exceed $2,000,000, and the gross price for (1) the contest or exhibition charged directly or indirectly and (2) the price for the sale, lease, or other exploitation of broadcasting and television rights of the

contest or wrestling exhibition without any deductions, except as specified. (BPC § 18824(a)(1))

b) A fee of 5 percent of the amount paid for admission to the contest or wrestling exhibition, but no more than $100,000. The commission shall report to the Legislature on the fiscal impact of the $100,000 limit on fees collected by the commission for admissions revenues during its next sunset review. (BPC § 18824(a)(2))

c) A fee of up to 5 percent of the gross price for the sale, lease, or other exploitation of broadcasting or television rights, but no less than $1,000 or more than $35,000. (BPC § 18824(a)(3))

6) Specifies that, if the fee on admissions for a boxing contest exceeds $70,000, the amount in excess of $70,000 shall be paid one-half to the Commission and one-half to the Boxers' Pension Fund. (BPC § 18824(a)(2)(B))

7) Specifies the following related to boxer pension benefits:

a) Requires the Commission to establish a pension plan for professional boxers (Boxers' Pension Plan) who engage in boxing contests in this state. (BPC § 18881(a))

b) Requires the Commission to establish the method by which the Boxers' Pension Plan will be financed, including those who must contribute to the financing of the pension plan. Specifies that the method of financing the Boxers' Pension Plan may include, but is not limited to, assessments on tickets and contributions by boxers, managers, promoters, or any one or more of these persons, in an amount sufficient to finance the Boxers' Pension Plan, as specified. (BPC § 18881(b))

c) Requires any Boxers' Pension Plan established by the Commission to be actuarially sound. (BPC § 18881(c))

8) Specifies the following related to the pension funds:

a) Creates the Boxers' Pension Fund, requires contributions to finance the pension plan to be deposited in the State Treasury and credited to the fund, and continuously appropriates all moneys in the Boxers' Pension Fund to be used exclusively for the purposes and administration of the pension plan. (BPC § 18882(b))

b) Specifies that the Boxers' Pension Fund is a retirement fund and no moneys within it may be deposited or transferred to the General Fund. (BPC § 18882(c))

c) Specifies that the Commission has exclusive control of all funds in the Boxers' Pension Fund and prohibits transfers or disbursements in any amount from the fund except upon the authorization of the commission and for the purpose and administration of the pension plan. (BPC § 18882(d))

d) Requires the Commission or its designee to invest the money contained in the Boxers' Pension Fund according to the same standard of care as a trustee, specifies that the commission has exclusive control over the investment of all moneys in the Boxers' Pension Fund, and authorizes the commission to invest the moneys in the fund through

the purchase, holding, or sale of any investment, financial instrument, or financial transaction that the commission in its informed opinion determines is prudent, except as otherwise prohibited or restricted by law. (BPC § 18882(e))

e) Limits the administrative costs associated with investing, managing, and distributing the Boxers' Pension Fund to be limited to no more than 2 percent of the corpus of the fund, requires diligence to be exercised by administrators in order to lower the fund's expense ratio as far below 2 percent as feasible and appropriate, and requires the commission to report to the Legislature on the impact of this limitation during the next regularly scheduled sunset review. (BPC § 18882(f))

f) Allows a promoter to add to the price of each ticket sold for a professional boxing contest an amount specifically designated on the ticket for contribution as a donation to the Boxers' Pension Plan, specifies that the additional amount is not subject to the admissions tax or any other deductions, specifies that this does not authorize the addition of amounts less than all the tickets sold for the professional boxing contest involved, and requires the promoter to pay additional contributions collected in accordance with the Boxers' Pension Plan. (BPC § 18884(a))

g) Authorizes, in addition to any other form in which retirement benefits may be distributed under the Boxers' Pension Plan, the Commission to, in lieu of a pension, award to a covered boxer a medical early retirement benefit in the amount contained in the covered Boxers' Pension Plan account at the time the commission makes this award and in the manner provided in the regulations governing the Boxers' Pension Plan. (BPC § 18887)

9) Authorizes the Commission to contract with a private or public entity for the administration of the Boxers' Pension Plan. (4 California Codes of Regulations (CCR) § 400)

10) Provides that any boxer who fights in a Commission-approved contest must have contributions made to the must sign a waiver of privacy rights to the extent necessary to enable the Commission to locate the boxer in order to assure the boxer's receipt of benefits under the Boxers' Pension Plan. Provides that any boxer who incurs a break in service prior to becoming a covered boxer shall cease to be a participating boxer in the Boxers' Pension Plan and requires the Commission to determine the eligibility of each boxer for participation in the Boxers' Pension Plan, with any misrepresentation by a boxer, manager, promoter, or beneficiary as grounds for the denial, suspension or discontinuance of benefits, in whole or in part, or for the cancellation or recovery of benefit payments. (4 CCR § 402)

11) Requires a promoter to contribute $.88 on every ticket, excluding a working complimentary ticket, up to a maximum contribution of $4,600 per show. (4 CCR § 402)

12) Specifies that a participating boxer shall become vested in the amount credited to the participating boxer's regular account when the participating boxer has fought in at least ten scheduled rounds per calendar year during each of four calendar years without an intervening break in service and has fought in at least 75 scheduled rounds without a break in service. (4 CCR § 405)

13) Authorizes the Commission to do one or a combination of the following:

a) Pay benefits directly from the Boxers' Pension Fund in a lump sum or installments;

b) Invest the amount of the accrued benefit in an installment contract or annuity for the benefit of the covered boxer or the participating boxer's beneficiary by conversion of existing contracts or otherwise. Such installment contract, endorsed as nontransferable, may be distributed to the covered boxer or the covered boxer's beneficiary;

c) Distribute to the covered boxer the contracts on the covered boxer's life; in such event, if the vested interest of the covered boxer is less than the value of contracts to be distributed, then the Commission may reduce their net value to the amount of the vested interest by making a policy loan or allowing the participating boxer to purchase the excess contract value. (4 CCR § 406)

14) Charges the Commission the duties of the general administration of the Boxers' Pension Plan, including, but not limited to, the following:

a) The discretion to determine questions relating to the eligibility of boxers to participate or remain a participating boxer or a covered boxer hereunder and to receive benefits under the Boxers' Pension Plan;

b) To compute, certify, and direct the amount and the kind of benefits to which any covered boxer shall be entitled;

c) To maintain all necessary records for the administration of the Boxers' Pension Plan;

d) To determine the size and type of any contract to be purchased from any insurer, if any, and to designate the insurer from which such contract shall be purchased;

e) To prepare and distribute information to participating boxers concerning their rights and obligations, including a summary description stating the requirements and benefits of the Boxers' Pension Plan in English and Spanish, using commonly spoken language to the extent possible, which shall be sent to each manager and to each boxer at appropriate times, including at the time of initial licensure and renewal.

f) To place the funds in the Boxers' Pension Plan in trust and to select a trustee to invest and administer the funds. (4 CCR § 408)

This bill:

1) Requires the Commission to establish a MMA Pension Plan for martial artists (defined as a licensed professional mixed martial artist, licensed professional kickboxer, licensed professional Muay Thai fighter, or athlete licensed by the Commission other than a boxer) who engage in MMA contests in this state that must be actuarially sound and requires the Commission to establish the method by which the MMA Pension Plan will be financed, including those who shall contribute to the financing of the MMA Pension Plan.

2) Specifies that financing the MMA Pension Plan may include, but is not limited to: assessments on tickets; revenue through the sale of special interest license plates and other commission-branded items, including, but not limited to, sport paraphernalia and

souvenirs and; contributions by martial artists, managers, promoters, or any one or more of these persons, in an amount sufficient to finance the MMA Pension Plan.

3) Requires a promoter to pay the Commission all amounts scheduled for contribution to the MMA Pension Plan at the time they pay, a promoter shall pay Commission fees. Specifies that if the Commission requires contributions to the MMA Pension Plan to be made by the martial artist and the martial artist's manager, those contributions shall be made at a time and manner prescribed by the Commission.

4) Establishes the MMA Pension Fund in the State Treasury, continuously appropriated to be used exclusively for the purposes and administration of the pension plan and establishes the MMA Pension Fund as a retirement fund, moneys from which are prohibited from deposit or transfer to the General Fund. Grants the Commission exclusive control of all funds in the MMA Pension Fund and specifies that no transfer or disbursement in any amount shall be made except upon the authorization of the Commission and for the purpose and administration of the MMA Pension Fund. Grants the Commission exclusive control over the investment of all moneys in the MMA Pension Fund. Specifies that the administrative costs associated with investing managing, and distributing the MMA Pension Fund shall be limited to no more than 2 percent of the corpus of the fund and requires diligence to be exercised by administrators in order to lower the fund's expense ratio as far below 2 percent as feasible and appropriate. Requires the Commission to report to the Legislature on the impact of this provision during the next regularly scheduled sunset review.

5) Allows a promoter to add to the price of each ticket sold for a professional MMA contest an amount specifically designated on the ticket for contribution or as a donation to the MMA Pension Plan, specifies that the additional amount is not subject to the admissions tax or any other deductions, specifies that this does not authorize the addition of amounts less than all the tickets sold for the professional boxing contest involved, and requires the promoter to pay additional contributions collected in accordance with the MMA Pension Plan.

6) Requires the Commission, on or before July 1, 2024, to adopt emergency regulations to implement the bill, including establishing procedures by which the Commission will notify any martial artist eligible to receive benefits from the MMA Pension Plan of the date the right to receive the benefits vests and the dollar amount of the benefits that have accrued as of that date; notify them of the date upon which the martial artist will first be able to receive benefits or will first be able to convert all, or a portion of, those benefits to an early medical or early vocational retirement benefit; notify them of the procedure by which the martial artist will be able to claim benefits, and the procedure by which the martial artist will be annually notified of the value of the accrued benefits beginning after the date upon which the right to receive the benefits vests in the martial artist.

7) Makes the following findings and declarations:

   a) Many Californians find a need, purpose, and great benefit in participating in combat sports.

   b) That professional athletes licensed under this chapter, as a group, for many reasons, do not retain their earnings, and are often injured or destitute, or both, and unable to

take proper care of themselves, whether financially or otherwise, and that the enactment of this article is to serve a public purpose by making provisions for a needy group to insure a modicum of financial security for professional athletes.

c) Athletes licensed under this chapter may suffer extraordinary disabilities in the normal course of their trade. These may include acute and chronic traumatic brain injuries, resulting from multiple concussions as well as from repeated exposure to a large number of subconcussive punches and kicks, eye injuries, including retinal tears, holes, and detachments, and other neurological impairments.

d) The pension plan of the commission is part of the state's health and safety regulatory scheme, designed to protect professional athletes, including mixed martial artists, licensed under this chapter from the health-related hazards of their trade. The pension plan addresses those health and safety needs, recognizing the disability and health maintenance expenses those needs may require.

e) The regulatory system of California is interrelated with the conduct of the trade in every jurisdiction. Athletes licensed under this chapter participate in contests in other states and many athletes who are based in those other jurisdictions may participate in California on a single-event basis.

f) The outcomes and natures of fights in other jurisdictions are relevant to California regulatory jurisdiction and are routinely monitored for health and safety reasons, so that, for example, a knockout of an athlete licensed under this chapter in another jurisdiction is paid appropriate heed with respect to establishing a waiting period before that athlete may commence fighting in California.

g) The monitoring of other jurisdictions is an integral part of the health and safety of California athletes licensed under this chapter due to the interstate nature of the trade, and therefore the regulatory scheme for contests and athletes under this chapter should reflect this accordingly.

COMMENTS

1. Need for this bill?

According to the author,

"Licensed professional MMA fighters currently do not have a pension fund, although boxers do. This leaves MMA fighters vulnerable to financial insecurity especially as hospital bills for their injuries continue to affect them post-retirement. As professional athletes, they undertake immense physical and psychological training and endure injuries and risks— yet they have no guaranteed pension plan for their commitment to this physically taxing combat sport."

2. **Background** According to the Senate Business, Professions and Economic Development Committee:

   The Commission administers a Boxers' Pension Plan, which was originally established in 1982 aimed at providing monetary resources to retired professional boxers. In 2005, the Bureau of State Audits (BSA) found that the fund was poorly administered and very few boxers have or would receive benefits from the Boxers' Pension Fund. The Auditor noted that from 2001-2004, total benefits paid to boxers were $36,000, while administrative costs were six times greater. Further, the Auditor also noted that, as of 2003, only 14 percent of licensed boxers were vested and their accounts were very low. On December 31, 2005, only 43 participants were eligible for retirement benefits totaling just $430,000. BSA recommended reducing vesting requirements and increasing the gate fees used to fund the plan. According to a report issued by BSA in January 2011, these recommendations from 2005 remained unresolved.

   The Commission responded to BSA's recommendation by stating that it would conduct a study on the impact of reducing vesting requirements and pursue changes in statute or regulation or an increase in gate fees. During the 2013 sunset review oversight of the Commission, the Committee noted that the Commission had improved its outreach efforts to ensure that athletes know they are eligible for benefits but also noted that the administration of the fund (as well as costs to administer it that are paid to a third party plan administrator) as well as the potential that the monetary amounts received by a vulnerable fighter population may not serve their health and welfare needs continued to call the Boxers' Pension Fund's existence into question. Questions were raised as to whether a lump sum payment was a proper benefit to a fighter, or whether there were potentially more appropriate means by which to assist these athletes like providing health insurance benefits, connecting fighters to coverage for medical services, or directing retired boxers to medical coverage options like Covered California so they are able to receive ongoing, consistent medical treatment that is not likely covered by a one-time payment.

   During the 2018 sunset review oversight of the Commission, it noted that it had "increased Pension Plan distributions to qualified retired boxers, despite the obstacles in locating potential claimants. The Commission's outreach efforts regarding the Pension Plan have improved over the past several years, however, remains limited in further efforts to locate eligible boxers." At the time, there were almost 300 covered boxers and almost $3.8 million in fund assets, with 11 boxers paid just over $176,000 in 2018. The Commission advised that establishing an MMA Pension Plan was outlined in its Strategic Plan but questions were raised at the time about how an MMA Pension Plan would be structured, given its specificity for boxers, as well as the general challenges associated with underfunded pensions. At its March 2023 meeting, it was reported that the Commission had deposited $65,597.14 to the Boxers' Pension Fund in the current fiscal year and that the Fund has approximately $4.658 million as of the beginning of 2023.

   A May 2023 Los Angeles Times article, "California created the nation's only pension for aging boxers. But it's failing many of them", found that the pension plan does not have enough money to pay all unclaimed pensions without reducing the amount of money received by fighters who become eligible in future years - with just $294,000 set aside for the $2.1 million owed to boxers who haven't been paid. Many boxers have not claimed them because, in many cases according to the article, they were unaware that they were even eligible for a pension. While the Commission has made recent efforts to advertise this benefit

to boxers, the article states that the Commission has waited until a boxer turns 50 before attempting to contact them for the first time, and by then, the vast majority of addresses are no longer current. The article found that approximately 200 boxers could have claimed a pension last year, but only 12 of them did so. The article also noted that the Commission's contracted pension administrator, Benefit Resources, has raised alarms in the past about the impact of too many boxers coming forward with late claims in the same year which creates uncertainty and instability in the fund.

3. Committee Concerns

The committee appreciates the sponsor's intention to provide a pension to former MMA fighters. However, several aspects about this bill are concerning:

- Given the trouble that the existing Boxers Pension Fund, upon which the proposed MMA Pension Fund is modeled, has in distributing pensions to eligible Boxers, why should the state replicate this model?

- Is the intended pension plan a qualified plan under IRS code?

- Who is the plan sponsor for the pension plan? Who is the plan administrator? How is the plan administrator selected? What are the terms for administering the plan? The committee understands that like this bill, the Boxer Pension fund statute authorized a maximum fee of 2 percent but raised that fee to up to 20 percent. What is the current fee for administering the Boxer Pension Fund? Does the Commission intend to use the same plan administrator for this new MMA pension fund? The committee understands that the Boxer Pension Fund has a substantial unfunded liability. How is the Commission addressing that fund's unfunded liability? How will it prohibit MMA contributions from being used to subsidize the Boxers Pension Fund? How will it ensure that the MMA fund does not incur a similar unfunded liability?

- Since the state established the Boxer Pension Fund decades ago, it has established the CalSAVERS' program, which has been thoroughly vetted and in which individuals can easily enroll. Why not require as part of licensing with the Commission, that an MMA prove they have a 401K or IRA plan or, if not, require registering with CalSAVERS? The Commission could work with CalSAVERS to establish a method for making direct contributions from the Commission to an MMA's CalSAVERS account. The committee would be more favorably disposed to legislation for that method, if needed, than to the current proposal.

- The bill appears to give to the Commission complete authority over the plan including over benefit payments and investment decisions with few, if any, oversight mechanisms. Whereas CalSAVERS and other public pension fund boards usually include several members dedicated to financial oversight and are generally well staffed with investment professionals, the Commission does not appear to have that expertise. Under the proposed plan, could the Commission or the plan administer invest in the companies that sponsor or promote the MMA contests? How will the Commission prevent such self-dealing?

- Could sponsoring a pension plan establish an employer – employee relationship between the state and MMAs? What is the employment relationship between the plan sponsor and

the plan beneficiary? The committee understands that MMAs are licensed independent contractors. It is very unusual for the state or any employer to provide pensions for independent contractors. Given the fluctuating state of the law regarding when someone is an employee versus when they are independent contractors, does the state risk becoming the employer of record for MMAs?

- Although federal case law under *Howard Jarvis Taxpayers Association et al., v. California Secure Choice Retirement Savings Program* currently mitigates our concern that the plan could be subject to ERISA, the evolving position from the U.S. Department of Labor's in that case suggests caution in establishing further expansion of pension plans administered by the state for non-public employees?

- Could a plan beneficiary have a cause of action against the state for failing to administer the plan in accordance with any fiduciary duties? The committee is concerned to what extent the proposed MMA Pension could expose the state to common law or state breach of fiduciary duty claims that would otherwise be preempted if the plan were subject to ERISA. This raises further questions. Does the Legislation create a fiduciary duty to the plan beneficiaries? It seems it does. Who owes that duty? The Commission? The State? The Plan Administrator? If Commission staff or plan administrators violate that duty and the fund's assets disappear or become insufficient to pay benefits, does the State have an obligation to restore benefits to the plan beneficiaries?

- Since the proposed plan would cover nonresident MMAs, to what extent is the state exposed to civil suits in other jurisdictions? Should the bill at least contain a forum selection clause?

- Why would we stop at pension plans for these two sports? Why shouldn't the state extend this plan to other sports?

Because of the timing between the drafting of this analysis and the short turn-around between this bill's hearing in Senate Business, Professions and Economic Development and its hearing in this committee, it is difficult to assess the bill given our understanding that some amendments will be offered or taken in the former. We look forward to working with the author and sponsor to see that key issues and concerns continue to be addressed going forward.

4. Proponent Arguments

According to the Association of Boxing Commissions and Combative Sports,

"Due to California's size and the number of high level mixed martial arts competitions held each year in your state, passage of a pension fund dedicated to the MMA community would be a huge benefit to the fight community as a whole."

According to Bash Boxing,

"Most MMA fighters leave the sport in poor physical health due to years of intense training and performance, and with little to not financial security or sources of income for the future. Unlike other professional athletes in other sports, including boxers in California, MMA

fighters do not have pension plans or other retirement benefits to help them when they become older."

According to the California Amateur Mixed Martial Arts Organization, Inc. (CAMO),

"We believe that AB 1136 is a milestone initiative that incentivizes California athletes to fight in California, offering pension benefits to California athletes that is unrivaled by any other state. We believe that this bill will also support California promoter stakeholders who will benefit from a competitive advantage in attracting talent and athletes. California local promoters drive millions of dollars of economic impact with their athletic events and as we support local promoters, we
support our local communities."

5. Opponent Arguments:

According to Fightopinion.com,

"The same administrative problems for the boxing pension fund will end up happening with a Mixed Martial Arts pension fund. Administrators come and go. You cannot rely on the promise of one or two people to run the pension properly when there is zero guarantee that they will be the administrators 10 or 15 years from now."

"Instead of creating a separate pension for MMA fighters, the current Boxing Pension Fund should be amended to include *all* licensees. It would stop any Equal Protection violations by the Athletic Commission. Additionally, the money that currently exists in the Boxing Pension Fund (Investments Account) can be leveraged to increase cash flow right away as opposed to starting from scratch with a whole new system for a different class of athletic licensees. It financially, administratively, and legally makes little sense to create another pension."

6. Dual Referral: The Senate Rules Committee referred this bill to the Senate Committee on Business, Professions and Economic Development and to the Senate Committee on Labor, Public Employment and Retirement.

7. Related / Prior Legislation:

AB 1703 (Carrillo) would increase the cap on the amount of admissions revenue that promoters must report to the Commission from $2,000,000 to $4,000,000 and increases the cap on the admissions revenue fee paid to the Commission from $100,000 to $200,000. This bill is pending in the Senate Committee on Appropriations.

SB 1126 (Cortese, Chapter 192, Statutes of 2022) expanded the CalSavers' program from covering eligible employers that have five or more employees to covering those that have one or more employees; and 2) mandated that all eligible employers to participate in CalSavers by December 31, 2025, unless the board extends that date.

AB 102 (Committee on Budget, Chapter 21, Statutes of 2020), transferred authority from EDD to the CalSavers board to enforce, via FTB, employer compliance with the CalSavers program; allowed cannabis-regulating agencies to share data with CalSavers for its licensed cannabis businesses; changed other technical aspects and investment limitations of the program; and renamed the program from California Secure Choice to CalSavers.

SB 1042 (Pan, 2020) would have required state regulatory licensing authorities of marijuana related businesses to furnish the CalSavers board specified employer contact information with respect to licenses issued. This bill died in the Senate Labor, Public Employment and Retirement Committee.

SB 1234 (De León, Chapter 804, Statutes of 2016) provided legislative approval for the California Secure Choice Retirement Savings Program (SCRSP) and set forth recommendations and requirements for the design and implementation of that program.

SB 1234 (De León, Chapter 734, Statutes of 2012) created the initial statutory framework for SCRSP and required the SCRAP Board to perform a market analysis and feasibility study to determine if SCRSP could be implemented and to publish its findings and bring a recommendation to the Legislature for approval.

AB 2940 (De León , 2008) would have created the California Employee Savings Program (CalESP), under the administration of the California Public Employees Retirement System (CalPERS) to provide retirement savings opportunities to California's private sector employees, and would have authorized CalPERS to offer deferred compensation programs to state employees. This bill died in the Senate Appropriations Committee. SUPPORT

SB 247 (Perata, Chapter 465, Statutes of 2006) among other changes, raised the amount from 2 to 20 percent of the average annual contribution made to the fund in the previous two years, not including any investment income derived from the corpus of the fund that could be used for administrative costs associated with investing, managing, and distributing the Boxers' Pension Fund.

AB 286 (Cedillo, Chapter 776, Statutes of 2001) changed the name of the Boxers Pension Account to the Boxers Pension Fund, established the Fund in the State Treasury, authorized the continuous appropriation of the funds deposited in the Fund to be used exclusively for the purposes and administration of the pension plan, and specified that the State Athletic Commission has exclusive control over the moneys in the fund.

SUPPORT

CA State Athletic Commission (Sponsor)
Association of Boxing Commissions and Combative Sports
Bash Boxing
California Amateur Mixed Martial Arts Organization, INC. (CAMO)
Englebrecht Promotions & Events
Iconos Fight Entertainment
International Sport Kickboxing Association
North American Boxing Federation
Urijah Faber's A1 Combat

OPPOSITION

FightOpinion.com

-- END --

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

Bill No:	AB 1137	**Hearing Date:**	July 12, 2023
Author:	Jones-Sawyer		
Version:	February 15, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Excluded employees.

KEY ISSUE

Should a state agency notify an excluded state employee (i.e., managers, supervisors, etc.) in writing of a merit salary adjustment denial 10 working days before the proposed effective date of the adjustment?

Should excluded employees receive overtime pay and holiday credit, as specified?

ANALYSIS

Existing law:

1) Establishes the Ralph C. Dills Act (Dills Act) which sets forth a framework that governs labor relations between the State of California and state employees, except for specified managerial, confidential and supervisory employees. (Government Code § 3512-3524)

2) Provides the following definitions (GC § 3527):

   a) Defines "employee" as a civil service employee of the State of California, including state agencies, boards, and commissions designated by law to employ civil service employees, except the University of California, Hastings College of the Law, and the California State University.
   b) Excepts from the definition of state "employee," managerial employees, confidential employees, supervisory employees, and other employees, as defined.
   c) Defines "excluded employee organization" as one that includes excluded employees of the state and that has as one of its primary purposes representing its members in employer-employee relations, including supervisory employee organizations.
   d) Defines "state employer" or "employer," for purposes of meeting and conferring on matters relating to supervisory employer-employee relations, as the Governor or his or her designated representatives.

3) Establishes the Bill of Rights for State Excluded Employees to inform state supervisory, managerial, confidential, and employees otherwise excepted from coverage under the Dills Act, of their rights and terms and conditions of employment, as specified, and serves to promote harmonious personnel relations among those representing state management in the conduct of state affairs. (GC § 3526)

4) Authorizes supervisory employees to form, join, and participate in the activities of supervisory employee organizations of their own choosing for purposes of representation on all matters of supervisory employer-employee relations, as specified, or to refrain from so doing. They also have the right to represent themselves individually in their employment relations with the public employer. (GC § 3531)

5) Provides excluded employee organizations with the right to represent their excluded members in their employment relations, including grievances, with the State of California. (GC § 3530)

6) Specifies that the scope of representation for supervisory employees includes all matters relating to employment conditions and supervisory employer-employee relations including wages, hours, and other terms and conditions of employment. (GC § 3532)

7) Authorizes the California Department of Human Resources (CalHR) to adopt reasonable rules and regulations for the administration of employer-employee relations, including excluded employer-employee relations. (GC § 3535)

8) 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))

9) Exempts from FSLA's maximum hour (i.e., overtime) requirements any employee employed in a bona fide executive, administrative, or professional capacity, as specified. (29 USC 213 (a)(1))

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

This bill:

1. Requires a state agency employer to notify an excluded employee in writing of a merit salary adjustment denial 10 working days before the proposed effective date of the adjustment.

2. Provides that an excluded employee required to work on January 1, the last Monday in May, July 4, the first Monday in September, Thanksgiving Day, or December 25 shall receive the following:

   A. If the employee is eligible for overtime payments under FSLA, one-half times their salary rate for all hours worked on the holiday and eight hours of holiday credit. This pay shall count toward any premium overtime compensation earned during the same workweek. Part-time employees shall receive prorated amounts subject to department rules.

   B. If the employee is ineligible for overtime payments under FSLA, eight hours of holiday credit and four hours of informal time off. Part-time employees shall receive prorated amounts of holiday credit and informal time off, subject to department rules.

COMMENTS

1. Need for this bill?

According to the author,

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

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

2. Proponent Arguments

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

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

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

3. Opponent Arguments:

None received.

4. Prior Legislation:

SB 716 (Alvarado-Gil, 2023) would give state excluded employees, such as managers and supervisors, the option of requesting binding arbitration as a method for resolving disputes with their state employers after first exhausting the current grievance resolution procedures. The bill is pending in the Assembly Judiciary Committee.

SUPPORT

Association of California State Supervisors (Sponsor)

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

OPPOSITION

None received

-- END --

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

Bill No:	AB 1140	**Hearing Date:**	July 12, 2023
Author:	Committee on Insurance		
Version:	June 21, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: Insurance

KEY ISSUE

Should the Legislature adjust the amount for which the Employment Development Department (EDD) director can approve a settlement involving a reduction of tax and penalties to $11,500 or less, without prior submission to the Attorney General and for that amount to be adjusted annually based on the Consumer Price Index.

ANALYSIS

Existing law:

1) Provides that a civil employment tax dispute arising under employee compensation, refunds and overpayments, and reassessment may be settled under one of the following conditions:

   a) The EDD director may approve a settlement involving a reduction of tax in settlement of $7500 or less. Once an appeal of an employment tax matter dispute has been filed with the appeals board, the appeal has been assigned to an administrative law judge, and a notice of hearing has been issued, approval of the settlement by the assigned administrative law judge shall be obtained. If the decision of the administrative law judge has been appealed, approval of the appeals board shall be obtained. A proposed settlement shall be grounds for continuance of the scheduled hearing until the Attorney General (AG) has completed a review of the proposed settlement. "Civil employment tax matters in dispute" means those matters that are the subject of protests, appeals, or refund claims.

   b) Each proposed settlement involving a reduction of tax or penalties, except for those $5000 and under may be approved by the EDD director, the administrative law judge, or the Unemployment Insurance Appeals Board (appeals board), as applicable, without prior submission to the AG. (Unemployment Insurance Code §1236)

This bill:

1) Increases the amount for which the EDD director can approve a settlement involving a reduction of tax and penalties to $11,500 or less, without prior submission to the Attorney General and for that amount to be adjusted annually based on the Consumer Price Index (CPI).

2) Limits the application of increases for minimum liability auto insurance coverage to those policies and bonds that are issued or renewed after January 1, 2025, and on or after January 1, 2035, as specified.

3) Expands the California Department of Insurance (CDI) diversity efforts, including the Insurance Diversity Task Force (Task Force) to include persons with disabilities, as defined, and requires a member of the Task Force to be a member who is a representative of a person with disabilities business enterprise, as defined.

4) Requires the license of a licensee that is suspended by the Secretary of State to become inactive and be prohibited from conducting any activity for which a license issued by the Insurance Commissioner (Commissioner) is required until the license is no longer suspended by the SOS.

5) Requires the Commissioner to submit fingerprint images and related information, as specified, to the Department of Justice for applicants applying for a license as a self-service storage agent, a variable life and variable annuity agent, and a vehicle service contract.

6) Aligns communication requirements for bail licensees with the requirements for others licensed by CDI.

7) Allows the Commissioner to suspend or revoke licenses for life settlement brokers, as provided.

8) Allows physicians and surgeons who are members of inter-indemnity, reciprocal, or inter-insurance contracts to also be notified by electronic transmission and allow for electronic ballots.

COMMENTS

1. Need for this bill

The committee is analyzing this bill as it relates to EDD policy within its jurisdiction and defers all other policy contained in the bill to the Senate Committee on Insurance.

The amount for which the EDD director can approve a settlement involving a reduction of tax and penalties has not been modified in well over a decade. This bill would modify that amount and authorize it to be adjusted annually based on the CPI, thereby negating the necessity to have it statutorily adjusted in future. The CPI is a metric tied to market prices, measures the change in prices paid by consumers for goods services, and is considered a reliable measurement of current economic conditions.

The author states “This is the Assembly Insurance Committee’s bi-annual omnibus bill, which includes several changes that are non-controversial, technical, or otherwise classified as code cleanup.”

2. Double Referral

This bill was first referred to the Senate Committee on Insurance, where it gained passage on consent.

3. Proponent Arguments

The California Department of Insurance states "This bill proposes amendments identified by the California Department of Insurance (CDI or Department) that help clarify existing law, delete obsolete and superseded code sections, and create new laws agreed to between CDI and stakeholders. Specifically, among other amendments, AB 1140 would…increase the settlement threshold amount for the Director of the Employment Development Department (EDD). This proposal would increase the threshold amount for which the EDD Director can approve a settlement involving a reduction of tax and penalties to $11,500 or less; as well as approve settlements of civil employment tax matters with a reduction amount of $11,500 or less, both without prior submission to the Attorney General. This threshold would also be adjusted annually based on the Consumer Price Index."

4. Opponent Arguments

None received.

SUPPORT

California Department of Insurance (Sponsor)
Ap42, LLC
Blue Shield of California
City National Bank
Poindexter Consulting Group
Veterans in Business Network
1 Individual

OPPOSITION

None received

-- END --

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

Bill No:	AB 1204	**Hearing Date:**	July 12, 2023
Author:	Holden		
Version:	April 27, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Alma Perez-Schwab		

SUBJECT: Contractors: contracts: restrictions

KEY ISSUE

Should the Legislature prohibit a licensed specialty contractor from subcontracting with more than one contractor in the same license classification, on the same single project or undertaking, unless the subcontractor has *employees* who perform the work in the relevant classification or the specialty contractor is a signatory to a bona fide collective bargaining agreement, as specified?

ANALYSIS

Existing law:

1) Establishes the California State Licensing Board (CSLB), within the Department of Consumer Affairs (DCA), to license and regulate contractors and home improvement salespersons. (Business and Professions Code (BPC) §7000 *et seq*.)

2) Requires a licensed contractor to include their license number in all construction contracts, subcontractors' calls for bid, and all forms of advertising, as specified. (BPC §7030.5)

3) Specifies the following branches of contracting:
   a. General engineering contracting;
   b. General building contracting and Residential remodeling contracting.
   c. Specialty contracting (BPC §7055)

4) Permits a general building contractor to take a prime contract or a subcontract for a framing or carpentry project, but prohibits a general building contractor from taking a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work, as specified. (BPC §7057(b))

5) Defines a specialty contractor as a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts. (BPC §7057.5(a))

6) Specifies that a specialty contractor includes a contractor whose operations include 1) the business of servicing or testing fire extinguishing systems; 2) a contractor whose operations are concerned with the installation and laying of carpets, linoleum, and resilient floor

covering; and, 3) a contractor whose operations are concerned with preparing or removing roadway construction zones, lane closures, flagging, or traffic diversions on roadways, including, but not limited to, public streets, highways, or any public conveyance. (BPC §7057.5(b)(c)(d))

7) Requires as a condition of initial licensure, reinstatement, reactivation, renewal or continued maintenance of a license, a current and valid certificate of workers compensation insurance or certification of Self-Insurance, as specified. (BPC §7125 (a)(b))

8) Requires a private employer to secure the payment of workers' compensation either through workers' compensation insurance or self-insurance. (LAB §§3700-3709.5)

9) Provides that for purposes of the Labor Code and the Unemployment Insurance Code, where another definition of "employee" is not otherwise specified, and for the wage orders of the Industrial Welfare Commission (IWC), a person providing labor or services for remuneration shall be considered an employee unless the hiring entity satisfies the 3-part ABC test (per Dynamex):
   a. The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact.
   b. The person performs work that is outside the usual course of the hiring entity's business.
   c. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.
   (Labor Code §2775)

10) Specifies that any person who holds a valid state contractor's license, and who willingly and knowingly enters into a contract with any person to perform services for which a license is required as an independent contractor, and that person does not meet the burden of proof of *independent contractor status* or hold a valid state contractor's license, to a civil penalty in the amount of two hundred dollars ($200) per person so contracted with for each day of the contract. (Labor Code §1021.5)

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

12) Authorizes the Labor Commissioner (LC), if upon inspection or investigation, determines that any person is employing workers in violation of the workers' compensation requirements above, to issue a citation to the person in violation, as specified.

This bill:

1) Prohibits a specialty contractor from entering into a contract for performance of work on the same single project or undertaking with *more than one subcontractor* in the same license classification as the specialty contractor offering the contract, unless either of the following requirements are satisfied:

a. The subcontractor employs persons who are classified as employees to perform work in that license classification on the single project or undertaking; or,
b. The specialty contractor is a signatory to a bona fide collective bargaining agreement that covers the type of work being performed on the single project or undertaking and addresses the issue of subcontracting or subletting.

2) Makes a violation of the above provisions a cause for disciplinary action.

3) Defines the following for purposes of this bill:
   a. "Employs persons who are classified as employees" to mean the subcontractor classifies the individuals as employees rather than independent contractors for purposes of the Labor Code.
   b. "Specialty contractor" to mean the same as defined in existing law in BPC §7058.

COMMENTS

1. Background: *Dynamex* and AB 5

The employer-employee relationship is at the core of the rights and obligations found within Labor Code. Being classified as an employee is essential to trigger most of the employer mandates and worker protections found within existing law. California's wage and hour laws (e.g., minimum wage, overtime, meal periods and rest breaks, etc.), workplace safety laws, and retaliation laws protect employees, *but not independent contractors*. Additionally, employees can go to state agencies such as the Labor Commissioner's office to seek enforcement of these laws, whereas independent contractors must resolve their disputes or enforce their rights under their contracts through other means.

For several decades, the employer-employee relationship was put under pressure due to the increased use of independent contractors and the misclassification of employees. For employers lawfully using the independent contractor model, they trade control over the working conditions for being released from many of the primary obligations of being an employer, including paying overtime, remitting payroll taxes, securing workers' compensation coverage, and ensuring a healthy and safe work environment. Unfortunately, this model created incentives for employers to misclassify employees as independent contractors. In 2017, California's Employment Development Department Tax Audit Program conducted 7,937 audits and investigations, resulting in assessments totaling $249,981,712, and identified nearly *half a million* unreported employees.[1]

The issue culminated with a 2018 Supreme Court decision, *Dynamex Operations West, Inc. v. Superior Court (2018) 4 Cal.5th 903.* Under Dynamex, the test for whether a worker is an independent contractor or an employee was simplified to a three-prong test:

(A) The worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;

[1] Employment Development Department 2018 Annual Report on Fraud Deterrence and Detection Activities, https://edd.ca.gov/About_EDD/pdf/Fraud_Deterrence_and_Detection_Activities_2018.pdf.

(B) The worker performs work that is outside the usual course of the hiring entity's business; and
(C) The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

In 2019, AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the Dynamex decision requiring that employers prove that their workers can meet the ABC test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships. AB 5 also provided specified industrial categories where the long-standing Borello test would remain the standard for determining who is an employee. Under Borello, in *S. G. Borello & Sons, Inc. v Dept. of Industrial Relations* (1989) 48 Cal.3d 341, the California Supreme Court created an 11 point "economic realities" test on whether someone could lawfully be considered an independent contractor.

Although field activity suspended in 2020 due to the COVID-19 pandemic, various enforcement efforts continued including the EDD Audit Program which conducted 2,097 audits and investigations, leading to $74.5 million in assessments and the discovery of 31,287 misclassified workers.[2]

2. Background: Contractors State License Board

The Contractors State License Board (CSLB) is the entity responsible for the implementation and enforcement of the Contractors' State License Law regulating both the licensure and practice, and discipline, of individuals operating in the construction industry. Existing law requires that all businesses and individuals who construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the CSLB if the total cost, including both labor and materials, of one or more contracts on the project is $500 or more.

As noted by the Senate Business and Professions Committee analysis of this bill, "The CSLB licenses and regulates approximately 289,000 licensees in 45 licensing classifications and 2 certifications, and registers approximately 25,000 Home Improvement Salespersons. Each licensing classification specifies the type of contracting work permitted in that classification. To obtain licensure in each classification, applicants are required to take and pass both a trade examination and a law and business examination. Licensees may not perform work outside of a classification without having the appropriate license to do so, unless they are a "B" general contractor who is able to take a prime contract or subcontract for projects involving other trades as long as framing and carpentry (the C5 trade) is not counted among those other trades."

There are four main licensure classifications under the CSLB: General Engineering Contractor; General Building Contractor and (B-2) Residential Remodeling Contractor; and Specialty Contractors. Under the specialty classification, there are 42 specialty contractor classifications including, among others, the following types of contractors: concrete, drywall, carpentry, electrical, flooring, landscaping, roofing, sheet metal, and solar.

[2] Joint Enforcement Strike Force On the Underground Economy, Employment Development Department, (April 1, 2022) https://edd.ca.gov/siteassets/files/payroll_taxes/pdf/jesfreport2020.pdf

3. Need for this bill?

The author and proponents of the measure raise concerns that licensed specialty contractors may not be properly utilizing employees and instead subcontracting with other specialty contractors to avoid having "employees." As noted above, being classified as an employee is essential to trigger most of the employer mandates and worker protections found within existing labor law, including the requirement that they secure workers' compensation and contribute to the unemployment insurance program on behalf of their employees.

This bill would prohibit any specialty contractor from using more than one subcontractor in the same license classification as the specialty contractor for work at the same single project or undertaking, unless the subcontractor has workers classified as employees. The author and sponsor contend that this prohibition will deter contractors from misclassifying employees as independent contractors and from hiring subcontractors instead of employees.

According to the author, "The issue of employees being misclassified as independent contractors remains an ongoing problem in the construction industry. Contractors who choose to ignore our labor laws continue to prevent their employees from receiving well-deserved wages and benefits. [This bill] would lead to safer workplaces where workers are not misclassified."

4. Proponent Arguments:

According to the sponsors of the measure, the State Building and Construction Trades Council of California, "Despite the best efforts of the Labor Commissioner, the labor movement, and high-road contractors who follow the law, the issue of employees being misclassified as independent contractors remains an ongoing problem in the construction industry. There are scores of examples of a Contractor State License Board-licensed contractor winning a bid on a project and not hiring journeyworkers or apprentices to perform the work and instead hiring independent contractors. These independent contractors are used because they can underbid the work at the expense of law-abiding contractors. These low-road contractors do not follow worker protections required by law which allows them to have the lowest bid.

With several independent contractors working for and getting direction from someone who has no employees and therefore no responsibility for their health and safety, California's strong labor laws are not enforced equitably among all the contractors on a given project. They are less likely to participate in job site safety meetings and often do not keep the same hours as the law-abiding, high-road contractors on the job. Common certifications like first aid, CPR, and OSHA 10 often required by contractors to maintain a safe and affordable workers' compensation policy are virtually non-existent among those who aren't required to carry workers' compensation as independent contractors.

By limiting the number of independent contractors performing the same scope of work under a single subcontract, AB1204 will help solve the problem of misclassification of employees. It will also lead to getting accurate certified payroll reports and decrease the likelihood a project is abandoned. The bill would lead to safer workplaces where workers are not misclassified. This bill will not affect subcontracting between legitimate subcontractors who properly classify themselves as employers and their workers as employees."

5. Opponent Arguments:

None received.

6. Double Referral:

This bill was double referred to Senate Business, Professions & Economic Development and Labor, Public Employment and Retirement Committees.

7. Prior Legislation:

AB 336 (Cervantes and Megan Dahle, 2023) would require a contractor licensee, at the time of renewal, to certify on a license renewal form the three workers' compensation classification codes for which the highest estimated payroll is reporter, as specified. AB 336 is pending in Senate Appropriations Committee.

SB 216 (Dodd, Chapter 978, Statutes of 2022) expands the license classifications required to have a certificate of workers' compensation insurance on file with the CSLB to include a Concrete contractor (C-8), a Warm-Air Heating, Ventilating and Air-Conditioning contractor (C-20,) and a Tree Service contractor (D-49) until January 1, 2025; and, beginning January 1, 2025, extends that requirement to include all licensure classifications under the jurisdiction of the CSLB.

SB 1064 (Newman, Chapter 190, Statutes of 2022) requires structural pest control companies to provide proof of workers' compensation for company registration with or licensure by the California Structural Pest Control Board.

AB 2705 (Holden, Chapter 323, Statutes of 2018) subjected an unlicensed person acting as a contractor to the existing criminal penalties that apply to licensed contractors for not securing the required workers' compensation, and made this crime subject to the same two-year statute of limitations as for licensees.

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified the decision of the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018)* requiring that employers prove that their workers can meet a 3 part 'ABC' test in order to be lawfully classified as independent contractors, and exempted from the test certain professions and business-to-business relationships.

SUPPORT

State Building and Construction Trades Council of California (Sponsor)
Air Conditioning Sheet Metal Association
California Legislative Conference of Plumbing, Heating & Piping Industry
California State Council of Laborers
District Council of Iron Workers of The State of California and Vicinity
Finishing Contractors Association of Southern California
National Electrical Contractors Association (NECA)
Northern California Allied Trades

Painters and Allied Trades, District Council 16
Southern California Glass Management Association (SCGMA)
Western Painting and Coating Contractors Association

OPPOSITION

None received

-- END --

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

Bill No:	AB 1484	**Hearing Date:**	July 12, 2023
Author:	Zbur		
Version:	May 18, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Temporary public employees.

KEY ISSUE

Should the Meyers-Milias-Brown Act (MMBA) require local public employers to include temporary employees, as specified, in the same bargaining unit as permanent employees?

ANALYSIS

Existing law:

1) Governs collective bargaining in the private sector under the federal National Labor Relations Act (NLRA), but leaves it to the states to regulate collective bargaining in their respective public sectors. (29 USC 151)

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

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

3) Defines, under the MMBA, "public employee" to mean any person employed by any public agency, including employees of fire departments and fire services of counties, cities and counties, districts, and other political subdivisions of the state, except a superior court, and persons elected by popular vote or appointed to office by the Governor. (GC §§ 3501 and 3501.5)

4) Prohibits a public employee from being subject to punitive action or denied promotion, or threatened with any such treatment, for the lawful exercise of action as an elected, appointing, or recognized representative of any employee bargaining unit. (GC §3502.1)

5) Establishes under the MMBA, that the scope of representation must include all matters relating to employment conditions and employer-employee relations, including, but not

limited to, wages, hours, and other terms and conditions of employment, except, consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. (GC § 3504)

6) Authorizes under the MMBA, a public agency to adopt reasonable rules and regulations after consulting in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations. (GC § 3507)

7) Establishes the Public Employment Relations Board (PERB), a quasi-judicial administrative agency charged with administering certain statutory frameworks governing employer-employee relations, resolving disputes, and enforcing the statutory duties and rights of public agency employers and employee organizations, but provides the City and County of Los Angeles a local alternative to PERB oversight.

8) Establishes the Public Employee Communication Chapter (PECC) that, among other provisions, requires public employers subject to specified collective bargaining statutes to provide employee exclusive representatives with the names and home addresses of newly hired employees, as well as their job titles, departments, work locations, telephone numbers, and personal email addresses, within 30 days of hire or by the first pay period of the month following hire. In addition, public employers must provide this information for all employees in a bargaining unit at least every 120 days, except as specified. (GC § 3555)

This bill:

1) Defines "temporary employee" to mean a temporary employee, casual employee, seasonal employee, periodic employee, extra-help employee, relief employee, limited-term employee, per diem employee, and any other public employee who has not been hired for a permanent position.

2) Applies the following requirements to temporary employees of a public employer who have been hired to perform the same or similar type of work that is performed by permanent employees represented by a recognized employee organization:

   a) Upon the request of the recognized employee organization to the public employer, the bill requires:

      i. Temporary employees to be automatically included in the same bargaining unit as the permanent employees if temporary employees are not presently within the unit definition. This subparagraph does not require the same terms and conditions of employment for permanent and temporary employees.

      ii. The terms and conditions of employment of permanent and temporary employees in the same bargaining unit to be addressed in a single memorandum of understanding. This subparagraph shall apply upon the expiration of the existing memoranda of understanding that covers the permanent and temporary employees, unless the recognized employee organization and public employer agree to an earlier date. This subparagraph does not require the same terms and conditions of employment for permanent and temporary employees.

b) Requires the public employer to provide, upon hire, each temporary employee with their job description, wage rates, and eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions. The same information shall be provided to the recognized employee organization, along with the employee information required under the Public Employee Communication Chapter (PECC) for the temporary employee, within five business days of hiring the temporary employee.

c) Requires the public employer to include, when providing the employee organization with the employee information required by PECC, the anticipated end date of employment for each temporary employee or actual end date if the temporary employee has been released from service since the last list was provided.

d) Requires that the scope of representation in bargaining units:

   i. That include permanent employees includes the matter of whether a temporary employee who subsequently obtains permanent employment receives seniority or other credit or benefit for their time spent in temporary employment shall be a matter within the scope of representation.

   ii. That include temporary employees includes the matter of whether a temporary employee receives a hiring preference over external candidates for permanent positions.

   iii. Are not subject to the above two matters unless the memorandum of understanding may lawfully address those subjects.

   iv. Apply to any memorandum of understanding covering permanent employees entered into after the effective date of this section.

e) Grants temporary employees in a bargaining unit who have been employed for more than 30 calendar days use of any grievance procedure in a memorandum of understanding that covers both temporary and permanent employees to challenge any discipline without cause unless the memorandum of understanding expressly refers to this paragraph and waives its requirements.

   i. This provision is effective only with respect to a memorandum of understanding entered into after the effective date of this section.

   ii. This provision does not require public employers to retain temporary employees whose services are no longer needed, to require pretermination hearings before the dismissal of temporary employees, or to prevent a public employer from replacing temporary employees with employees hired for permanent positions.

3) Requires that complaints alleging violations of this bill's provision be processed as unfair practice charges with the Public Employment Relations Board pursuant to its powers under the Myers-Milias-Brown Act.

4) Provides that nothing in the bill's provisions supersede or provide any exemption to the restrictions or requirements related to individuals working after retirement from a public retirement system.

5) Makes the following legislative findings and declarations:

   a) Local governments have increasingly hired temporary employees to provide public services.
   b) Temporary employees are disproportionately women and people of color, and the lesser rights of temporary employees exacerbate race and gender inequity in public employment.
   c) There is a statewide interest in ensuring that temporary employees are protected by state laws providing for fair labor relations and that the increasing use of temporary employees does not undermine public employee labor relations.
   d) The specified provisions relating to temporary employees is intended to apply to all public employers covered by the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code).

6) Makes further legislative findings and declarations that the duties and responsibilities of local agency employer representatives under the bill's provisions are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore, the costs incurred by the local agency employer representatives in performing those duties and responsibilities under this section are not reimbursable as state-mandated costs.

7) Prohibits any reimbursement for state mandated costs, as specified, but recognizes that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other law.

COMMENTS

1. Need for this bill?

According to the author,

"The problem this bill seeks to remedy is that cities and counties have grown increasingly reliant on temporary employees to address long-term staffing needs, but these employees do not receive the same retirement, health insurance, disability, job security, or union benefits as permanent employees. According to SEIU Local 521 and AFSCME Local 829, an estimated 20% of the workforce employed by San Mateo County are classified as temporary employees and are filling positions for years. SEIU Local 1021 also estimates that 40% of the employees at the City of Oakland are classified as temporary. SEIU locals have also reported that temporary employees make up a considerable percentage of the work force in San Francisco, Santa Cruz, Santa Barbara, and San Diego."

2. Proponent Arguments

According to the author,

"The ability of workers to bargain for basic workplace rights and protections is a bedrock value in our state. Temporary employees are a vital part of the public workforce for many

local governments and are often employed for long periods of time, yet they are often not allowed to bargain alongside their permanent coworkers for good wages, benefits, and working conditions. AB 1484 provides temporary employees of cities and counties the option to join existing bargaining units, providing them with basic workers' rights without significantly increasing costs or limiting the employer's ability to hire temporary workers as needed."

According to the California Labor Federation,

"Historically, the public sector has offered a pathway to the middle class for people of color. As job quality hs been eroded, it has undermined this promise. Today, we see that workers classified as temporary are disproportionately women and people of color, underscoring the inequity of this two-tier system."

AB 1484 will help improve working conditions for public sector temporary workers by allowing a union representing permanent employees who perform similar work to request that temporary employees be included in the same bargaining unit. This will allow the union to advocate for these workers and to push for greater fairness for temporary workers."

3. Opponent Arguments:

According to a coalition of local agency employers, including the California League of Cities and the California State Association of Counties, "AB 1484 includes requirements that will be difficult, if not impossible, for public employers to fulfill, including provisions that conflict with existing law for permanent employees."

The coalition argues that the bill includes an overly broad definition of temporary employee that would cover "extra help", "casual employees", and "retired annuitants" retained for seasonal or "surge" needs, such as nurses, election workers, paid interns, mosquito and vector control technicians, and parks and recreation staff, like lifeguards and summer camp counselors who lack a sufficient community of interest with regular or temporary employees due to their sporadic or intermittent relationship with the employer.

The coalition further argues that the bill upsets existing law providing for a robust process for determining bargaining units by requiring that temporary employees be included in the same bargaining unit as permanent employees even thought temporary employees would be ineligible for many of the benefits that would be the subject of bargaining, thus creating undue tension in the bargaining process.

Another problematic aspect of the bill from the opposition's perspective stems from its grant to temporary employees of a grievance procedure. The opposition argues the following: that the bill undermines existing law by potentially creating a property interest in the employees' temporary positions that currently does not exist; that disciplinary procedures, to the extent temporary employees are granted collective bargaining rights, should be in the scope of bargaining not set in statute; and that the grant gives temporary employees greater rights than permanent employees who have not completed their probationary period.

<u>Application to employees hired by a staffing company – Not directly applicable but concern over possible PERB interpretation</u>

According to the Association of Health Care Districts and the California Association of Public Hospitals & Health Systems, who oppose the bill unless it is amended to exempt temporary employees who practice in a health care setting, AB 1484 would potentially cover employees through a staffing agency, such as a nurse registry, through application of PERB's "joint-employment" precedents.

"PERB defines 'joint employment' as follows: two entities that 'share influence over, or co-determine, one or more terms or conditions of employment.' Given the nature of the healthcare environment, it is not hard to imagine PERB concluding that a hospital and staffing agency are joint employers because the hospital controls the "manner and means" by which the work is performed-setting schedules, providing direct supervision, requiring the individual to follow hospital protocol, performing the same works as employees, etc."

Meanwhile, the American Staffing Association, informs the committee that it currently has a neutral position on the bill based on assurances from the bill sponsors confirming "that there is no intention to include employees of temporary staffing companies in the provisions of the bill. While an amendment to clarify the that point might be prudent to assist the casual reader of the bill, the plain letter language of the bill and existing law is clear that temporary staffing company employees are not covered by AB 1484."

4. Prior Legislation:

AB 1752 (Santiago, 2022) would have required community college districts (CCD) to adopt terms of compensation for part-time faculty of at least the same ratio to the full-time faculty for comparable duties to ensure pay parity for part-time faculty and would have required districts that do not have collective bargaining agreements with their part-time employees to bargain with them, as specified. The bill died in the Assembly Appropriations Committee.

SUPPORT

American Federation of State, County and Municipal Employees (Co-sponsor)
California Labor Federation (Co-Sponsor)
California State Council of Service Employees International Union (Co-sponsor)
California Employment Lawyers Association
California Teachers Association
Equal Rights Advocates
KIWA
North Valley Labor Federation
Orange County Employees Association
Peace Officers Research Association of California (PORAC)
San Mateo Labor Council
South Bay AFL-CIO Labor Council
Tech Equity
United Food and Commercial Workers Union, Western States Council
Western Center on Law & Poverty

OPPOSITION

Association of California Healthcare Districts

California Association of Code Enforcement Officers
California Association of Joint Powers Authorities
California Association of Public Hospitals & Health Systems
California Association of Recreation & Park Districts
California Municipal Utilities Association (CMUA)
California Special Districts Association
California State Association of Counties
City of Buena Park
City of Carlsbad
City of Concord
City of Fremont
City of Garden Grove
City of Placentia
City of Rancho Cucamonga
City of Rancho Palos Verdes
City of San Marcos
City of Sunnyvale
City of Whittier
County of Del Norte
County of Kern
County of San Bernardino
El Dorado Irrigation District
Las Virgenes Municipal Water District
League of California Cities
Los Angeles County Division, League of California Cities
Marin County Council of Mayors and Councilmembers
Public Risk Innovation, Solutions, and Management
Rural County Representatives of California
Town of Truckee
Urban Counties of California

-- END --

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

Bill No:	AB 1593	**Hearing Date:**	July 12, 2023
Author:	Garcia		
Version:	February 17, 2023		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Dawn Clover		

SUBJECT: California Workforce Development Board: Salton Sea geothermal resources area: Equitable Access Program

KEY ISSUE

Should the Legislature require the California Workforce Development Board (WDB) to develop and administer the program to prioritize employment opportunities for local residents in construction, manufacturing, technical, maintenance, operations, or reclamation activities located in the Salton Sea geothermal resources area?

ANALYSIS

Existing law:

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

2) Requires WDB to report to the Legislature on, among other things, the need for increased education, career technical education, job training, and workforce development resources, including community workforce agreements, to help industry, workers, and communities transition to economic and labor market changes related to statewide greenhouse gas emissions reduction goals. (Health & Safety Code §38591.3)

3) Requires the California Energy Commission (CEC), on or before March 1, 2021, to establish and convene the Blue Ribbon Commission on Lithium Extraction in California to, among other things, review, investigate, and analyze issues relating to lithium extraction and use in California. (Public Resources Code § 25232)

4) Creates the California Workforce Innovation and Opportunity Act, which encourages WDB to collaborate with other public and private institutions, including businesses, unions, nonprofit organizations, kindergarten through 12th grades, career technical education programs, adult career technical education and basic skills programs, apprenticeships, community college career technical education and basic skills programs, entrepreneurship training programs where appropriate, the California Community Colleges Economic and Workforce Development Program, the Employment Training Panel, and county-based social and employment services, to better align resources across workforce, training, education, and social service delivery systems and to build a well-articulated workforce investment system. (Unemployment Insurance Code §§14000)

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

6) Defines "high road construction careers" as high road training partnerships that invest in regional training partnerships comprised of local building trades councils, workforce, community, and education interests that connect to state-approved apprenticeship programs, that utilize specified preapprenticeship training curriculum, and provide a range of supportive services and career placement assistance to women and people from underserved and underrepresented populations. (Unemployment Insurance Code § 14005)

7) Provides that all laws of a general nature have uniform operation and a local or special statute is invalid in any case if a general statute can be made applicable (California Constitution Article IV §16)

This bill:

1) Establishes the Equitable Access Program (Program), to be administered by WDB, and requires WDB to develop and administer the program to prioritize employment opportunities for local residents in construction, manufacturing, technical, maintenance, operations, or reclamation activities located in the Salton Sea geothermal resources area, including, but not limited to, projects that improve the accessibility of employment opportunities by providing language translation, interpretation, and assistance services.

2) Requires the Program to:

    a) Provide technical assistance to, and establish a framework for, preapprenticeship, registered apprenticeship, and other training programs using the high road construction careers model or high road training partnerships model;

    b) Monitor and track the rate residents of the Salton Sea geothermal resources area are hired on construction projects involving battery manufacturing and lithium-based technology in the Salton Sea geothermal resources area;

    c) Monitor and track the rate residents of the Salton Sea geothermal resources area are employed in the operations and maintenance of geothermal power plant and lithium recovery facilities in the Salton Sea geothermal resources area;

    d) Provide technical assistance to, and establish a framework for, the creation of infrastructure that will provide residents of the Salton Sea geothermal resources area a share of the benefit from the program's projects; and

    e) Provide technical assistance to, and establish a framework for, the creation of infrastructure that will develop labor standards that deliver community benefits, economic development, and labor opportunities.

3) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique need to prioritize employment opportunities for residents that live in proximity to the Salton Sea geothermal resources area and because of the high unemployment rate in the area.

4) Finds and declares that lithium is becoming an increasingly critical resource as the state, and the world, moves toward a clean energy future to tackle the climate crisis and that this metal is a crucial component of batteries needed to power electric vehicles, enable a 100 percent clean electrical grid, and move the state's homes and industries away from fossil fuels.

5) Finds and declares that California has abundant untapped lithium reserves, including in geothermal brine more than a mile underground near the Salton Sea. Further, the state is poised to become a global leader in the deployment of new, environmentally sound technologies that can coproduce lithium with renewable electricity from geothermal power plants in the Imperial Valley. Experts estimate the region could satisfy more than one-third of today's global lithium demand. Building out a world-class battery manufacturing ecosystem in tandem with lithium production and processing would also increase economic opportunities in the Salton Sea region, delivering quality jobs and community benefits to the region.

6) Finds and declares that there is a need to drive investments and job growth in the Salton Sea region that, for decades, has suffered from one of the highest unemployment rates in the state.

COMMENTS

1. Background

Salton Sea Known Geothermal Resource Area

According to some February 2023 figures, the global demand for lithium batteries is expected to grow more than five-fold by 2030 as more consumers move to electric vehicles and energy storage. Available demand projections vary widely and are subject to which types of batteries will more rapidly penetrate the market. According to the International Energy Agency, lithium demand may be 13 times higher if vanadium redox flow batteries[1] are popularized or 51 times higher if all-solid-state batteries[2] commercialize faster. The United States (U.S.), demand is anticipated to grow more than six times, which would amount to a $55 billion per year industry; however, a report estimates that the U.S. will continue to depend on an imported supply and the nation's businesses and their employees will represent only 30 percent of the value sold domestically.[3]

---

[1] https://www.sciencedirect.com/science/article/abs/pii/S2352152X19302798

[2] https://www.economist.com/the-economist-explains/2017/10/16/will-solid-state-batteries-power-us-all?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=17210591673&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gclid=Cj0KCQjw1_SkBhDwARIsANbGpFsdHUbGz3lxmoR-AimvdKHHL8QKA2bTMgVQC-4XgA8864Fp5ckpXSUaAnQzEALw_wcB&gclsrc=aw.ds

[3] https://www.reuters.com/markets/commodities/global-demand-lithium-batteries-leap-five-fold-by-2030-li-bridge-2023-02-15/

California's Salton Sea Known Geothermal Resource Area, approximately 95 miles east of San Diego in the Eastern Coachella and Imperial Valleys, is well positioned to become a competitive source of lithium supply that could potentially satisfy more than one-third of today's global lithium demand.[4] This area, the largest geothermal development in the state, currently includes 10 square miles of power plants, production wells, injection wells, and working lands. The concentration of lithium is at the southern end of the Salton Sea over half a mile below the sea floor. This opportunity for lithium production in California could unleash billions of dollars of new economic infrastructure development and high quality green jobs, which would advantageously create economic opportunities for the underserved region.

Blue Ribbon Commission on Lithium Extraction in California
Assembly Bill 1657 (E. Garcia - Chapter 271, Statutes of 2020) required the California Energy Commission to establish the Blue Ribbon Commission on Lithium Extraction in California (Commission), which was tasked with exploring opportunities and challenges in developing the lithium industry. The Commission's report was submitted to the Legislature on December 2022, and identified the Salton Sea Known Geothermal Resource Area, also known as "Lithium Valley," as a key element of California's clean energy future centered on the recovery of lithium from geothermal brine. The Commission found that it is imperative that new geothermal lithium recovery and related projects prioritize the development and hiring of a local workforce, provide resources to support the development of necessary training and educational opportunities, and commit to requirements for strong workforce and labor standards that produce high quality jobs and careers.

2. Need for this bill

The author states "The world demand for Lithium is expected to grow as much as ten-fold in the next decade. The existing Salton Sea geothermal area is well positioned to become a competitive source of Lithium supply that could possibly satisfy more than one-third of today's worldwide lithium demand. The opportunity for Lithium production in California also has the potential to unleash billions of dollars of new economic infrastructure development and high-quality green jobs in our state. AB1593 would create economic opportunities for a historically underserved region that has suffered from chronic unemployment for decades."

3. Proponent Arguments

According to the State Building and Construction Trades Council of California, "The Equitable Access Program will focus on employment in construction, manufacturing, technical, maintenance, operations, and reclamation activities for local Salton Sea residents. The board will provide technical assistance and establish a framework for training programs using high-road training partnerships. The board will also track the rate residents of the Salton Sea are hired on construction projects involving battery manufacturing and lithium-based technologies, as well as the rate residents of the Salton Sea area are employed in the operation and maintenance of geothermal power plants and lithium recovery facilities. The unemployment rate (14%) in Imperial County is the highest in California and three times higher than the state average. It is incumbent upon the state to improve the employment

[4] State of California. 2022-23 Governor's Budget. Proposed January 10, 2021

opportunities for Salton Sea area residents. The extraction of lithium and battery manufacturing using that lithium will provide such an opportunity."

The California Workforce Association states "The Equitable Access Program would monitor and track the rate residents of the Salton Sea geothermal resources area are hired on construction projects involving battery manufacturing and lithium-based technology, as well as employment rates in maintenance and operations in geothermal power plant and lithium recovery facilities. Additionally, it would provide technical assistance and establish a framework for preapprenticeship, registered apprenticeship, and other training programs. Besides providing community benefits, economic development, and labor opportunities this bill supports the State's plan to a sustainable future. This bill presents an opportunity to strengthen California's position as a leader in clean energy and reduce its carbon footprint.

By building a world-class battery manufacturing ecosystem, the State will generate billions from economic infrastructure development and green jobs in a region that has experienced chronic unemployment for decades. Imperial County suffers from high unemployment rates, home of El Centro, the city with the highest unemployment rate in the country. A lithium production hotspot would require a skilled workforce, providing employment opportunities in construction, manufacturing, technical field, maintenance, operations and more. The Equitable Access Program aims to break the cycle of generational unemployment and lack of opportunities in underserved and marginalized communities, providing a change for individuals and families to build a better future."

4. Opponent Arguments

None received

5. Related/Prior Legislation

SB 150 (Durazo et al., 2023) among other things, requires the California Department of Transportation (Caltrans) to work in partnership with WDB to support California's high road construction careers program and requires Caltrans to reserve a minimum total of $50 million of federal funds from the federal Infrastructure Investment and Jobs Act of 2022 to be allocated over four years to support high road construction careers programs that provide a range of supportive services and career placement assistance to underserved and underrepresented populations. *This bill was enrolled on July 5, 2023.*

SB 822 (Ducheny, 2023) would create the California Workforce Innovation and Opportunity Act to assist state agencies in advancing high-quality jobs with investments in the energy, resources, and transportation sectors and expand access to those jobs through education and training and require state agencies receiving climate investments to enter into a memorandum of understanding (MOU) with WDB to coordinate economic and workforce development planning, analysis, and implementation activities. *This bill was referred to the Assembly Committee on Jobs, Economic Development, and the Economy on June 29, 2023.*

AB 2095 (Kalra, 2022) would have established a program at LWDA for the disclosure of worker-related metrics and among other things, develop criteria and a scoring methodology to qualify an employer as a certified high road employer. *The bill was held on the Senate Appropriations Committee Suspense File.*

SB 154 (Committee on Budget and Fiscal Review - Chapter 43, Statutes of 2022) required Labor Agency to submit a report to the Legislature documenting all relevant programs and initiatives under the Employment Development Department, WDB, and Department of Industrial Relations regarding the high road standard.

SB 674 (Durazo - Chapter 875, Statutes of 2022) applied a high road jobs framework on California Department of Transportation and the Department of General Services (DGS) contracts for zero-emission transit vehicles and charging stations.

SB 700 (Durazo, 2022) established the High Road Employment Program within the LWDA, which requires each bidder for a contract with the state to submit a High Road Employment Plan to DGS to be eligible for a contract. *The bill was held on the Assembly Appropriations Committee Suspense File*.

AB 680 (Burke - Chapter 746, Statutes of 2021) enacted the California Just Transition Act, which required LWDA to update, by July 1, 2023, the funding guidelines for administering agencies to ensure that all applicants to grant programs funded by the Greenhouse Gas Reduction Fund meet fair and responsible employer standards and provide inclusive procurement policies.

AB 983 (E. Garcia, 2021) would have authorized a public entity to use, enter into, or require contractors to enter into, a community workforce agreement for construction projects related to battery manufacturing and lithium-based technology. *The contents of this bill were removed and replaced with unrelated language.*

AB 1657 (E. Garcia - Chapter 271, Statutes of 2020) required CEC to establish and convene the Commission, with 14 members appointed by a combination of the CEC, other state agencies, the Assembly Speaker, and the Senate Committee on Rules. The bill's provisions are due to sunset in October of 2023.

SUPPORT

Alianza Coachella Valley
California Workforce Association
City of El Centro
City of Imperial
City of Indio
Clean Power Campaign
Comite Civico Del Valle, INC
County of Imperial
County of Riverside Supervisor V. Manuel Perez
Los Amigos De LA Comunidad, Imperial Valley
State Building and Construction Trades Council of California

OPPOSITION

None received

-- END --

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

Bill No:	AB 1699	**Hearing Date:**	July 12, 2034
Author:	McCarty		
Version:	May 18, 2023		
Urgency:	No	**Fiscal:**	No
Consultant:	Glenn Miles		

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

KEY ISSUE

Should current non-probationary school and community college employees have the right of first refusal for any new classified position at their education employer, as specified?

ANALYSIS

Existing law:

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

2) Authorizes school and community college districts to adopt, as specified, a civil service merit system to regulate personnel through a 3-member personnel commission (college districts may have 5 members) and a personnel director (Education Code § 45221 et seq. and Education Code § 88051 et seq.).

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

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

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

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

This bill:

1) Requires school and community college employers to offer any vacancies for part-time and full-time positions with priority to current regular non-probationary classified employees who meet the minimum job qualifications of the position, or who could meet the minimum job qualifications after 10 or fewer hours of training paid by the employer unless otherwise negotiated by the employer and the applicable union.

2) Requires the employer to provide all of its classified employees notice of, and instructions for applying for, any new classified position at least 10 business days before the general public is authorized to apply for the position

3) Requires the employer to give the applicable union notice before the employer posts the position publicly.

4) Permits the employer to offer the new position to an external applicant only if no qualified, internal candidate applies for the new position within at least 10 business days after the employer provides notice, or if no internal candidate accepts the new position.

5) Requires the employer to grant the new position to a current regular non-probationary classified employee who applies for the position and who meets the minimum job qualifications of the position or who could meet the minimum job qualifications after ten or fewer hours of training paid for by the employer.

6) Requires the employer to give priority among those applicants in the following order:

   (A) By seniority among applicants currently working in the same classification as the new position for whom the new position would represent an increase in hours or wages.

   (B) By seniority among applicants in other classifications for whom the new position would represent an increase in hours or wages.

7) Authorizes an employee who accepts a new assignment to elect to either add the hours for the new assignment to their current assignment, if feasible, or, if the new assignment is more hours than their current assignment, to replace their current assignment with the new assignment.

8) Requires the employer to provide reasonable modifications to the assignment schedules to allow the employee to work both assignments if the employee elects to add the new assignment to their current assignment and the hours for the new assignment overlap with the hours for their current assignment.

9) Does not require an employer to grant additional hours that would qualify the employee for overtime pay.

10) Requires, when a part-time employee applies for an additional part-time assignment that requires a certain number of years of service, an employer to accept the current part-time employee's number of years of service with the employer, regardless of the capacity in which they earned those years.

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

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

13) Exempts the application of the bill's requirements if the total of the two positions would violate the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.) or any other state or federal law.

14) Applies the bill's provisions, as applicable, to county offices of education, school districts, and joint powers authorities comprising county offices of education or school districts, regardless of whether the employer has adopted the merit system; or to community college districts and joint powers authorities comprising community college districts, regardless of whether the college employer has adopted the merit system.

15) Defines "education employer" to mean, as applicable, a county office of education, school district, or joint powers authority comprised of county offices of education or school districts; or a community college district or joint powers authority comprising community college districts.

COMMENTS

1. Need for this bill?

According to the author,

"A survey conducted by the National Center for Education Statistics found that nearly 50% of public schools nationwide are experiencing a worker crisis. This crisis is not limited to teachers, but also includes classified employees such as school bus drivers, paraeducators and custodians. Forty-nine percent of public schools reported having at least one non-teaching staff vacancy as of January 2022. Of schools reporting at least one vacancy, custodial staff was identified as the staff position with the most vacancies, with 28 percent of schools reporting this vacancy. Transportation staff and nutrition staff positions were each reported as vacant by 14 percent of schools. (NCES, 2022)"

"The majority of classified employees work part-time, and over half of CSEA members earn less than $30,000 per year. They are not provided enough hours to make ends meet and do not qualify for benefits like health insurance."

"Part-time classified employees have very few employee protections and benefits. AB 1699 will ensure that existing, qualified, and classified employees have access to better pay, benefits, and overall support."

2. Proponent Arguments

According to the sponsors,

"This bill would require all public local agencies, county offices of education, community colleges, and joint power authorities to offer any new part- or full-time classified assignments to existing classified employees who are qualified and can reasonably perform the assignment. This bill would also prohibit education employers from disqualifying candidates who may need reasonable scheduling accommodations to complete more than one assignment."

"Not only will this bill help classified employees make ends meet, but it will also ensure that more employees have access to health insurance and retirement benefits. It will also help school districts and community colleges address the education workforce's crisis because they will be able to fill open positions quickly and efficiently with existing staff. Fully staffed schools will create a positive learning environment for our students."

3. Opponent Arguments:

According to a coalition of school employers, including the Association of California School Administrators and the California School Boards Association,

"Unfortunately, AB 1699 could require school employers to offer positions to candidates who meet minimum qualifications that apply for a position but are not necessarily the best suited compared to other candidates. It also establishes an inequitable system by setting a higher bar for external candidates, who often must meet additional job requirements to even be considered. For merit system districts, AB 1699 directly contradicts the core goals of promoting efficiency, fairness, and impartiality in the selection, retention and promotion of classified employees."

In instances where multiple internal candidates express an interest, the most senior employee, regardless of their work experience or current classification, would be the top candidate. For example, multiple internal candidates may meet the minimum qualifications to be an instructional aide in a TK classroom, but because of seniority considerations and the right of refusal for internal candidates, AB 1699 would prevent an LEA from offering the position to the most suitable candidate. In this example, an employee who has ever only worked in an office setting or secure juvenile facility would be offered the position over a candidate with experience working with four-and five-year-olds."

4. Prior Legislation:

AB 1273 (Bonta, 2023) would require the California Department of Education (CDE) to convene a workgroup on or before December 31, 2024, in consultation with the Division of Occupational Safety and Health (CalOSHA), the Department of Industrial Relations (DIR), the Labor Commissioner (LC), representatives of employee organizations, and representatives of voluntary local educational agencies for the purpose of reporting recommendations to the Legislature on or before December 31, 2025, on appropriate staffing ratios for classified school employee. This bill is currently in the Senate Appropriations Committee.

SUPPORT

California Federation of Teachers (Co-sponsor)
California School Employees Association (Co-sponsor)

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

OPPOSITION

Alameda County Office of Education
Association of California Community College Administrators
Association of California School Administrators
California Association of School Business Officials
California County Superintendents
California School Boards Association
Community College League of California
Kern County Superintendent of Schools
Orange County Department of Education
Redondo Beach Unified School District
Riverside County Office of Education
Riverside County Superintendent of Schools
Schools Excess Liability Fund
Small School Districts Association
Torrance Unified School District
Individual Letters: 1

-- END --