

2019-20 SESSION

**SENATE
THIRD READING PACKET**

MONDAY, JUNE 22, 2020



JONAS AUSTIN
Director

OFFICE OF SENATE FLOOR ANALYSES
651-1520

SENATE THIRD READING PACKET

Attached are analyses of bills on the Daily File for Monday, June 22, 2020.

<u>Note</u>	<u>Measure</u>	<u>Author</u>	<u>Location</u>
	<u>SB 417</u>	Portantino	Unfinished Business
+	<u>SB 801</u>	Glazer	Senate Bills - Third Reading File
+	<u>SB 862</u>	Dodd	Senate Bills - Third Reading File
	<u>SB 865</u>	Hill	Senate Bills - Third Reading File
	<u>SB 872</u>	Dodd	Senate Bills - Third Reading File
+	<u>SB 895</u>	Archuleta	Senate Bills - Third Reading File
+	<u>SB 902</u>	Wiener	Senate Bills - Third Reading File
+	<u>SB 907</u>	Archuleta	Senate Bills - Third Reading File
+	<u>SB 914</u>	Portantino	Senate Bills - Third Reading File
+	<u>SB 921</u>	Dahle	Senate Bills - Third Reading File
	<u>SB 940</u>	Beall	Senate Bills - Third Reading File
+	<u>SB 952</u>	Nielsen	Senate Bills - Third Reading File
+	<u>SB 956</u>	Jackson	Senate Bills - Third Reading File
	<u>SB 972</u>	Skinner	Senate Bills - Third Reading File
+	<u>SB 989</u>	Dahle	Senate Bills - Third Reading File
	<u>SB 999</u>	Umberg	Senate Bills - Third Reading File
+	<u>SB 1024</u>	Jones	Senate Bills - Third Reading File
	<u>SB 1049</u>	Glazer	Senate Bills - Third Reading File
	<u>SB 1099</u>	Dodd	Senate Bills - Third Reading File
	<u>SB 1102</u>	Monning	Senate Bills - Third Reading File
RA	<u>SB 1133</u>	Jackson	Senate Bills - Third Reading File
+	<u>SB 1138</u>	Wiener	Senate Bills - Third Reading File
+	<u>SB 1141</u>	Rubio	Senate Bills - Third Reading File
+	<u>SB 1173</u>	Durazo	Senate Bills - Third Reading File
	<u>SB 1185</u>	Moorlach	Senate Bills - Third Reading File
+	<u>SB 1190</u>	Durazo	Senate Bills - Third Reading File
	<u>SB 1207</u>	Jackson	Senate Bills - Third Reading File
+	<u>SB 1213</u>	Leyva	Senate Bills - Third Reading File
+	<u>SB 1255</u>	Committee on Insurance	Senate Bills - Third Reading File
+	<u>SB 1257</u>	Durazo	Senate Bills - Third Reading File
+	<u>SB 1312</u>	McGuire	Senate Bills - Third Reading File
	<u>SB 1347</u>	Galgiani	Senate Bills - Third Reading File
RA	<u>SB 1373</u>	Bates	Senate Bills - Third Reading File
	<u>SB 1384</u>	Monning	Senate Bills - Third Reading File
+	<u>SB 1399</u>	Durazo	Senate Bills - Third Reading File
+	<u>SB 1403</u>	Hueso	Senate Bills - Third Reading File
+	<u>SB 1409</u>	Caballero	Senate Bills - Third Reading File
	<u>SB 1472</u>	Committee on Natural Resources and Water	Senate Bills - Third Reading File
	<u>SCR 59</u>	Umberg	Senate Bills - Third Reading File
	<u>SCR 61</u>	Skinner	Senate Bills - Third Reading File
RA	<u>AB 75</u>	Committee on Budget	Assembly Bills - Third Reading File
	<u>AB 240</u>	Irwin	Assembly Bills - Third Reading File
	<u>AB 1007</u>	Jones-Sawyer	Assembly Bills - Third Reading File
	<u>AB 1185</u>	McCarty	Assembly Bills - Third Reading File
	<u>ACA 14</u>	Gonzalez	Assembly Bills - Third Reading File

+ ADDS

RA Revised Analysis

* Analysis pending

Note

Measure

[ACR 115](#)

Author

Kamlager

Location

Assembly Bills - Third Reading File

+ ADDS

RA Revised Analysis

* Analysis pending

UNFINISHED BUSINESS

Bill No: SB 417
Author: Portantino (D)
Amended: 5/26/20
Vote: 27 - Urgency

SENATE APPROPRIATIONS COMMITTEE: 5-2, 1/21/20
AYES: Portantino, Bradford, Durazo, Hill, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 29-5, 1/27/20
AYES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo,
Galgiani, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva,
McGuire, Mitchell, Monning, Moorlach, Pan, Portantino, Roth, Rubio, Skinner,
Stern, Umberg, Wieckowski, Wiener
NOES: Bates, Dahle, Jones, Morrell, Nielsen
NO VOTE RECORDED: Borgeas, Chang, Glazer, Grove, Wilk

ASSEMBLY FLOOR: 75-0, 6/15/20 - See last page for vote

SUBJECT: California Victim Compensation Board: claim

SOURCE: Author

DIGEST: This bill appropriates \$5,087,040 to the Executive Officer of the California Victims Compensation Board (Board) for the payment of specified erroneous conviction claims.

Assembly Amendments increase the appropriation amount to \$5,087,040 for the payment of six additional erroneous conviction claims approved by the Board.

ANALYSIS: Existing law authorizes a person convicted and imprisoned for a felony to submit a claim to the Board for pecuniary injury sustained as a result of erroneous conviction and imprisonment.

This bill appropriates General Fund revenues to the Board for the payment of the following erroneous conviction claims:

- 1) *Moonshadow Naomi Taggart, \$136,780.* On April 11, 2014, the Kern County District Attorney (DA) charged Moonshadow Naomi Taggart with two counts related to the possession of methamphetamine, and alleged that she had served prior prison terms for possession of a controlled substance, for car theft, and for possession of a controlled substance for sale. Following her guilty plea, the trial court sentenced her to a four-year split sentence, with one year to be served in the Kern County Jail, and the remainder on mandatory supervision, but she was released from jail shortly after sentencing.

On September 10, 2014, Taggart was arrested and charged with possession of a stolen vehicle. After entering a guilty plea to buying and receiving a stolen vehicle, and admitting to two prison priors, she was sentenced to two years in prison. On March 31, 2015, Taggart was granted early release, conditioned upon her promise not to leave Kern County without permission from the Kern County Board of Parole. A parole officer made two attempts to contact Taggart at her residence of record without success, and on June 26, 2015, a warrant was issued for her arrest.

On August 17, 2015, Taggart was arrested out-of-state and transported to California, and the Kern County DA charged her with escape from the Kern County Sheriff's Parole Program while also alleging the initial prison priors. A jury convicted Taggart of escape and the trial court imposed an aggregate term of five years (three years for escape, plus two years for the two prison priors). The court also imposed a consecutive term of two years and eight months related to the previous case of possession of a stolen vehicle, as well as a concurrent term of four years for the previous case of drug possession. Taggart's total sentence was seven years and eight months.

Taggart appealed the escape conviction, claiming insufficient evidence, and she was discharged to post-release community supervision during the pendency of the appeal. She had been continuously confined for 977 days since the escape arrest. On January 23, 2019, the appellate court reversed Taggart's escape conviction, finding that sheriff's parole did not constitute "lawful custody" because she was only minimally constrained and not deprived of physical freedom as she was not confined to a residence or specific facility.

Accordingly, there was no custody from which she could escape. The appellate court did, however, find that Taggart's departure from Kern County constituted a parole violation for the other two cases, for which she may be returned to

custody to serve the remainder of those sentences. At the resentencing, the trial court imposed a four-year sentence for possessing a stolen vehicle and a concurrent four year sentence for drug possession, but deemed both sentences were already served in full as Taggart had accrued a total of 2,367 days credit, and terminated her post-release community supervision.

On June 28, 2019, Taggart applied to the Board seeking compensation for erroneous conviction related to the escape charge. The Attorney General (AG) responded and agreed that she was actually innocent of the escape conviction and entitled to \$136,780 for 977 days of imprisonment. The Board's Hearing Officer agreed that Taggart was actually innocent of escape, but recommended compensation for 449 days of incarceration because she had served 528 days for her valid convictions of drug possession and possession of a stolen vehicle. At the Board's meeting to consider the proposed decision, the AG opposed the reduction in compensation because the trial court would not have resentenced her to prison for the two valid convictions if she had not been erroneously convicted of escape. The Board ultimately agreed with the AG and determined, based on a preponderance of evidence, that Taggart's erroneous incarceration included the concurrent period she served for the valid convictions, and recommended compensation in the amount of \$136,780 for all 977 days of her incarceration.

- 2) *Lionel Omar Rubalcava, finding of factual innocence, \$874,440.* Lionel Omar Rubalcava was convicted for attempted murder and spent over 17 years in prison. On November 18, 2019, Rubalcava was declared factually innocent.

On April 2, 2002, Raymond Rodriguez was shot in a drive-by shooting in the city of San Jose. Rodriguez's brother was with him at the time of the shooting. Both Rodriguez, who survived the shooting, and his brother claim to have seen, at the time of the shooting, a small portion of the shooter's face through an open portion of a tinted window, though neither said they recognized the shooter. Soon after the shooting, police located the burned out remains of the shooter's vehicle. Two days after the shooting, an incident occurred in which Rubalcava appeared in his car in front of Rodriguez's house. Subsequently, police showed Rodriguez, who was recovering in hospital, a picture of Rubalcava, whom Rodriguez identified as the shooter, as did his brother.

Rubalcava was soon thereafter arrested for attempted murder and tried for the crime in the Santa Clara County Superior Court. There was no physical evidence linking Rubalcava to the crime, and Rubalcava presented compelling evidence of an alibi at the time of the shooting. Nonetheless, after a short trial,

the jury convicted Rubalcava of attempted murder. On January 23, 2006, the Court of Appeal confirmed Rubalcava's conviction.

On October 15, 2018, with the assistance of the Northern California Innocence Project (Innocence Project), Rubalcava filed a petition with the Santa Clara County Superior Court to have his conviction vacated. The petition included a statement from Rodriguez indicating he was uncertain about his identification of Rubalcava as the person who shot him. As a consequence, the Santa Clara County District Attorney conducted an investigation with the Innocence Project. The investigation revealed that, since being shot, Rodriguez had made considerable changes to his life. He was no longer addicted to drugs and he was no longer affiliated with a street gang. Rodriguez also admitted to investigators he was never entirely sure of his identification of Rubalcava as the person who shot him. Though Rodriguez's brother continued to identify Rubalcava as the person who shot his brother, the district attorney lost confidence in Rubalcava's conviction. On March 18, the district attorney joined Rubalcava's petition of the court to vacate his conviction.

On April 24, 2019, the Santa Clara Superior Court granted Rubalcava's petition and vacated the entire judgement against him. Rubalcava was released from prison on May 15, 2019, after serving 6,246 days imprisoned for a crime he did not commit. Rubalcava's entire term of imprisonment was solely attributable to the wrongful conviction.

On January 2, 2020, the Board granted Rubalcava's application for compensation for wrongful conviction and found that he is factually innocent. The Board concluded Rubalcava is entitled to \$874,440, or \$140 for each day of erroneous incarceration.

- 3) *Ruben Martinez, finding of factual innocence, \$635,600.* Starting in 2005 through 2007, an auto body shop in Los Angeles was robbed on five separate occasions, at gunpoint, purportedly by the same male perpetrator. The robber forcibly took money from the business safe and from customers and employees. The only physical evidence of the robberies was a palm print left during the first robbery, which occurred on December 25, 2005.

On June 1, 2007, Martinez was charged in Los Angeles County Superior Court with nine counts of second-degree robbery while armed with a firearm, each count associated with the five robberies of the auto body shop. Martinez's palm print did not match the palm print left at the scene of the first robbery. In addition, Martinez insisted upon his innocence of all of the robberies and presented alibi evidence from his wife, brother-in-law and two work supervisors

contending Martinez had been at work on the occasion of two of the robberies. The only evidence presented against Martinez was eyewitness identification of Martinez as the robber by five employees and customers of the body shop. A jury in Martinez's first trial did not reach a verdict; however, a second jury convicted him to a sentence of 47 years and 8 months.

Martinez requested the Los Angeles District Attorney's Office (LA DA) consider his case for factual evidence. The subsequent LA DA investigation uncovered additional alibi evidence that "unmistakably" demonstrated Martinez was working at a site remote from the body shop at the time of two of the robberies. Because the LA DA believed the same perpetrator "clearly" committed all five of the robberies, the LA DA lost confidence in all of Martinez's robbery convictions. On November 5, 2019, the LA DA motioned in Los Angeles Superior Court for the overturn of Martinez's conviction, at which point Martinez was released from prison on his own recognizance. Two days later, the LA DA moved to vacate Martinez's robbery convictions, dismiss with prejudice the underlying case and issue a factual finding of innocence. On November 12, 2019, the court ordered vacated all nine convictions, dismissed the entire case with prejudice in the interest of justice and expressly found "the defendant to be factually innocent" in each of all nine charges.

On January 15, 2020, Martinez submitted an application with the Board for compensation as an erroneously convicted person. On January 24, 2020, the Board granted Martinez's application for compensation, in amount of \$635,600, for his 4,540 days of erroneous incarceration.

- 4) *Michelle Marie Poulos, finding of factual innocence, \$60,340.* On June 28, 2001, Poulos pleaded guilty to a single count of criminal threats against June Patti, who was Poulos' former romantic partner. Patti was the only witness to the threats Poulos was to have made against her. In exchange for her plea, Poulos received a suspended two-year prison sentence and was placed on three-year probation.

A year later, Poulos admitted violating the terms of her probation for felony possession of methamphetamine in the Los Angeles County Superior Court. On September 19, 2002, the trial imposed the previously suspended two-year prison sentence for criminal threats against Patti and a concurrent term of two years for methamphetamine possession.

Poulos was released from prison on September 25, 2003 after having served 431 days, consisting of 59 days pre-sentencing and 372 days post-sentencing, as well as 372 concurrent days for methamphetamine possession.

Thirteen years later, on January 23, 2017, the Los Angeles Superior Court granted Poulos' motion to vacate and dismiss her criminal threat conviction, for which prosecution had "lost trust in the witness Patti." The court found Patti had "lied and fabricated information," which resulted in harm to Poulos. Prior to the motion to vacate Poulos' conviction, in 2014, the court found another individual, Susan Mellen, had been erroneously convicted for murder based on Patti's false testimony.

Poulos then challenged her conviction for methamphetamine possession, reasoning that she would have been ordered to participate in a drug rehabilitation program, not prison, were it not for her erroneous criminal threat conviction. Poulos noted she completed a drug treatment program while in prison. While the Los Angeles County Superior Court initially denied Poulos' motion, upon remand, the court, on May 24, 2019, granted the motion to vacate the conviction for methamphetamine possession in the interest of justice. The court chose not to find Poulos' factually innocent of methamphetamine possession.

As the court weighed her motion for relief from the methamphetamine conviction, Poulos submitted an application to the Board on January 17, 2019, for compensation for erroneous incarceration. At that time, the law required an application for compensation for erroneous incarceration be submitted within two years of acquittal, pardon or release from custody. However, legislation took effect on January 2, 2020, while Poulos' case was stayed, that expanded the deadline for submitting application to 10 years following dismissal of charges. (See SB 269 (Bradford), Chapter 473, Statutes of 2019.) In light of this change in the law, the Board deemed her application timely and requested a response letter from the Attorney General. On February 28, 2020, the Attorney General concluded Poulos was entitled to a recommendation for compensation for erroneous incarceration. On March 23, 2020, the Board granted Poulos's application for compensation, in the amount of \$60,340, for 431 days of erroneous incarceration.

- 5) *Lawrence M. Martin, finding of factual innocence, \$1,015,980.* On September 18, 1997, Martin was arrested by San Jose State University Police Officer Stoker for possession of a knife and a usable amount of marijuana. Martin was released from custody prior to November 4, 1997, awaiting trial. On May 11, 1998, a jury in Santa Clara County convicted Martin of possession of a concealed "dirk or dagger" and of less than 28.5 grams of marijuana. On May 12, 1998, the court found that a) Martin had four prior serious and violent felony convictions within the meaning of California's "Three Strikes Law" and

b) Martin had served three prior prison terms. On August 11, 1998, the court sentenced Martin to 25 years to life for possession of a concealed dirk or dagger with serious or violent felonies within the meaning of the Three Strikes Law and a consecutive term of three years for the prior prison terms.

Between his arrest and conviction, Martin was arrested on November 4, 1997, for tampering with a vehicle and again, on January 16, 1998. He was charged and convicted of a misdemeanor on May 12, 1998 and sentenced to 90 days concurrent with his sentence described above. On January 16, 1998, Martin was convicted of misdemeanor possession of controlled paraphernalia, for which he was sentenced to one day in county jail.

On December 15, 2017, The Santa Clara County Superior Court vacated Martin's conviction for possession of a dirk or dagger because, in fact, Martin was in possession of a common pocket knife. On December 18, Martin submitted a claim with the Board requesting compensation for erroneous conviction. The Attorney General, on February 14, 2020, declared Martin to be factually innocent and conceded Martin is entitled to compensation for wrongful conviction for the crime of possessing a dirk or dagger. On March 18, 2020, VCB granted Martin's claim for compensation, awarding him \$1,015,980 for 7,257 days of wrongful incarceration. The compensation does not include time Martin served for the crimes of tampering with a vehicle and possession of a controlled substance.

- 6) *Ricky Leo Davis, finding of factual innocence, \$490,280.* In 1985, Ricky Leo Davis was convicted and sentenced for the brutal murder of Jane Hylton in 1985. Hylton, along with her 13-year-old daughter, Angela, had moved back into Hylton's mother's house, following Hylton's separation from her husband. Also living in the house were Davis, at the time 20 years old, and his girlfriend, Constance Dahl.

Late on the night of July 6, Davis, Dahl, and Hylton's daughter Angela entered Hylton's mother's home together. Davis and Dahl reported they had returned from a party, while Angela maintained she had been out with three teenaged boys. Davis, Dahl and Angela entered the home and, together, found Hylton's body. Hylton had been stabbed to death, and also had a bite mark on her left shoulder.

Police investigated Hylton's murder. Davis insisted he and Dahl were at the party until 3:00 a.m. Since the police were unable to identify the teens whom Angela said she had been with, and DNA testing technology was not yet available, the case went cold.

Seventeen years later, in 2002, police subjected Dahl to repeated interrogation, and he eventually confessed she bit Hylton while Hylton and Davis fought. Davis was charged with Hylton's murder in El Dorado County Superior Court. On August 17, 2005, a jury found Davis guilty of murder. He was sentenced to 16 years to life in prison. Because he was at that time serving a federal sentence for a bank robbery, Davis began his sentence for Hylton's murder on July 14, 2008. While in prison, Davis was convicted for assault of another inmate and sentenced to a two-year term to run consecutive with his sentence for murder.

In 2012, El Dorado County Superior Court appointed the Northern California Innocence Project to investigate Davis' conviction and to file a motion for post-conviction DNA testing. The El Dorado District Attorney's Office agreed to testing. The DNA test revealed the presence of the same DNA in the bite mark on Hylton's shoulder and the DNA under her fingernails. Crucially, that DNA did not match Davis' DNA. Subsequently, investigators matched the DNA from Hylton's body with one of three formerly teenage boys who had been with Angela the night of the murder. One of those individuals, now a man in his fifties, became a suspect in the murder case.

On February 13, 2020, the El Dorado County District Attorney moved to dismiss the murder charge against Davis, reporting Dahl's confession was not trustworthy, since unequivocal DNA evidence demonstrated Davis innocence. Davis was immediately released from custody.

On March 30, 2020, Davis submitted an application for compensation for erroneous incarceration. On April 27, 2020, the Board granted Davis \$490,280 for 3,502, the number of days he spent incarcerated erroneously.

- 7) *Samuel Bonner, finding of factual innocence, \$1,873,620.* Samuel Bonner was incarcerated for over 36 years for a conviction of first-degree murder and robbery. On February 10, 2020, he was declared factually innocent of both charges.

On November 11, 1982, Bonner drove Watson Allison to Leonard Polk's residence, at 850 Orizaba Avenue. Polk was observed by witnesses, including a Long Beach Police Officer, speaking with Allison alongside Bonner's car. Bonner was never seen exiting in the vehicle. Witnesses saw Bonner's vehicle drive away, but shortly thereafter, neighbors and the police officers saw Allison make several trips from Polk's apartment, carrying Polk's television, stereo speakers and a large duffel bag, and placing the items in Polk's vehicle. The police officer saw Allison enter Polk's vehicle alone, and drive off in it.

Soon after, Polk's neighbors entered Polk's apartment and found him dead from a gunshot wound. Officers issued a search for Bonner's vehicle and found it that evening parked near Allison's home. On November 12, 1982, police arrested Bonner and searched his person, his vehicle and his home, but found none of Polk's property. During questioning, Bonner was not forthright with Allison's name and whereabouts, or his own whereabouts on the night of Polk's murder, and he was subsequently released.

On November 22, 1983, officers found Polk's property in Allison's garage. Officers found a partial palm print on a piece of Polk's stereo equipment, and located an automobile fuse on Bonner's person similar to one found in the street in front of Polk's residence. The fuse was next to a footprint and a cloth speaker cover from one Polk's stolen speakers. Officers arrested Bonner on November 22, 1982. He and Allison were each charged with two counts: one count of first-degree murder with a special circumstance, robbery, and the special allegation of personal use of a handgun in commission of the murder, and count two, robbery.

Bonner and Allison were tried separately. Evidence presented against Bonner included testimony of a "jailhouse informant" who stated that Bonner confessed to shooting Polk, and the partial palm print and automobile fuse indicating that Bonner was at the scene of the crime.

The jury found Bonner guilty of murder in the first degree with the special circumstance of robbery, and of robbery, but not of the special allegation, personal use of a handgun in the commission of a murder. On December 5, 1983, the court sentenced Bonner to 25 years to life without the possibility of parole.

Years later, Bonner filed a petition to vacate his murder conviction and to consider charging him with new counts based on a change in the felony murder law. The court vacated Bonner's convictions and chose not to resentence him, because: (1) the jury found Bonner was not the killer; (2) Bonner's conviction was based upon the theory of felony murder, and statute regarding felony murder had changed since Bonner's conviction; and (3) the prosecution did not turn over exculpatory evidence to Bonner, including the informant's full criminal record and evidence that the informant committed perjury.

Bonner was released on July 11, 2019. On April 24, 2020, the Board granted Bonner's application for compensation for erroneous incarceration and awarded him \$1,873,620 as compensation for his 13,383 days incarcerated.

Background

The State Board of Control was established in 1945. It was revised and renamed the Victim Compensation and Government Claims Board by AB 2491 (Jackson, Chapter 1016, Statutes of 2000), and subsequently renamed the California Victim Compensation Board by SB 836 (Senate Budget and Fiscal Review Committee, Chapter 31, Statutes of 2016). SB 836 transferred the authority to approve general government claims for which no legal available appropriation exists to the Department of General Services, and the Board currently administers the Victim Compensation Program, the Revenue Recovery Program, Claims of Erroneously Convicted Felons, the Good Samaritan Act, and the Missing Children Reward Program.

Existing law authorizes a person convicted and imprisoned for a felony to submit a claim to the Board for pecuniary injury sustained as a result of erroneous conviction and imprisonment. Pursuant to SB 618 (Leno, Chapter 800, Statutes of 2013), a person who has secured a declaration of factual innocence from the court after having his or her conviction set aside is eligible for payment in a claim against the state. Upon application by the petitioner, the Board shall, without a hearing, recommend to the Legislature an appropriation to cover the claim. Likewise, if the court finds the petitioner has proven his or her innocence by a preponderance of the evidence, or the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned, or when the court vacates a judgment for a person on the basis of new evidence concerning a person who is no longer unlawfully imprisoned, and the court finds the evidence points unerringly to innocence, the Board shall, upon application by the claimant, without a hearing, recommend to the Legislature an appropriation to cover the petitioner's claim.

Otherwise, a claimant is required to introduce evidence in support of his or her claim at a hearing before the Board, and the Attorney General may introduce evidence in opposition. The claimant must prove, by a preponderance of the evidence, that: (a) the crime was not committed at all, or, if committed, was not committed by the claimant; and (b) the claimant sustained pecuniary injury though the erroneous conviction and imprisonment.

If a claimant meets the burden of proof, the Board shall recommend to the Legislature an appropriation of \$140 per day of incarceration served, including any time spent in custody that is considered part of the term of incarceration, such as time served in a county jail.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee:

- One-time General Fund appropriation to the Board in the amount of \$5,087,040 in 2020-21 for the payment of seven specified erroneous conviction claims.

SUPPORT: (Verified 6/17/20)

None received

OPPOSITION: (Verified 6/17/20)

None received

ASSEMBLY FLOOR: 75-0, 6/15/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Chen, Diep, Gray, Mathis

Prepared by: Mark McKenzie / APPR. / (916) 651-4101
6/17/20 16:55:02

**** END ****

THIRD READING

Bill No: SB 801
Author: Glazer (D) and McGuire (D), et al.
Amended: 5/20/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 9-1, 5/14/20
AYES: Hueso, Chang, Dodd, Hertzberg, Hill, McGuire, Rubio, Stern, Wiener
NOES: Dahle
NO VOTE RECORDED: Moorlach, Bradford, Skinner

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Electrical corporations: wildfire mitigation plans: deenergization:
public safety protocol

SOURCE: Author

DIGEST: This bill establishes new requirements on electrical corporations regarding deployment of backup electrical resources to customers receiving medical baseline allowance and living in a high fire-threat district, if the customer meets specified conditions, and requires an electrical corporation to develop its program to provide backup electrical resources in consultation with community disability rights groups or other local disability rights advocates.

ANALYSIS:

Existing law:

- 1) Establishes that the California Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations. (California Constitution, Article XII)

- 2) Requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the CPUC for review and approval, as specified. Following approval, the CPUC is required to oversee compliance with the plans. (Public Utilities Code §8386)
- 3) Requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety. As part of these protocols, an electrical corporation is required to include protocols related to mitigating the public safety impacts of deenergizing portions of the electrical distribution system that consider customers that receive medical baseline allowances. (Public Utilities Code §8386(c)(6))
- 4) Authorizes an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance if the customer meets specified conditions. (Public Utilities Code §8386(c)(6)(C))
- 5) Requires the CPUC to establish a standard limited allowance in addition to the baseline quantity and higher energy allocation of gas and electricity for residential customers dependent on life-support equipment and patients being treated for a life-threatening illness or who have a compromised immune system, if a medical professional, as specified, certifies in writing to the utility that the additional heating or cooling allowance is medically necessary to sustain life or prevent deterioration of the person's medical condition. (Public Utilities Code §739 (2)(c))

This bill:

- 1) Requires an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance if the customer meets those conditions and the additional condition that the customer is located in a high fire threat district.
- 2) Requires an electrical corporation to develop its program to provide backup electrical resources or financial assistance in consultation with community disability rights groups or other local disability rights advocates.

Background

Deenergizing electric lines. Generally, electric utilities attempt to maintain power and ensure continued reliability of the flow of power. However, as recent

catastrophic fires have demonstrated, the risk of fire caused by electric utility infrastructure can pose a great risk, perhaps greater than the risks of turning off the power to certain circuits. As a safety consideration, electric utilities have the ability and authority to deenergize electric lines in order to prevent harm or threats of harm. However, deenergizing electric lines can result in its own safety risks, as households, businesses, traffic signals, communication systems, critical facilities, water treatment facilities, emergency services and others lose electricity. Therefore, efforts to deenergize electric lines must consider the potential harm of the energized lines causing a wildfire against the safety hazards associated with eliminating electricity to the areas served by the electric line(s).

Recent history with proactive power shutoffs. Although there is some history with proactive power shutoffs, their use as a tool to prevent electric utility equipment from sparking fires is a more recent development that has expanded and grown in-use due to recent catastrophic wildfires ignited by utility infrastructure. The practice to proactively shut off power began with San Diego Gas & Electric (SDG&E) after several electric utility infrastructure-ignited catastrophic fires in 2007. Following catastrophic fires in 2017, in July 2018, the CPUC adopted a staff resolution (ESRB-8) to extend the reasonableness, public notification, mitigation and reporting requirements in the SDG&E decision to all electric investor-owned utilities (IOUs), including Pacific Gas and Electric (PG&E) and Southern California Edison (SCE). The CPUC resolution requires the utility, after a deenergization event, now coined a Public Safety Power Shutoff (PSPS) event, to inspect the lines of the circuits that were turned off before it can restore power. As such, the duration of a power shutoff event may last several days. The CPUC also requires utilities to meet with local communities before employing the power shutoff practice in a particular area, requires feasible and appropriate customer notifications prior to a deenergization event, and requires notification to the CPUC once there is a decision to deenergize facilities. In adopting the resolution, CPUC commissioners expressed a desire that the proactive power shutoffs would only be used as a “last resort” by the utilities.

SB 901 requires power shutoff protocols. SB 901 (Dodd, Chapter 626, Statutes of 2018) included a requirement to adopt protocols for deenergization events. In December 2018, the CPUC opened a rulemaking proceeding (R. 18-12-005) to delve more deeply into the use of proactive power shutoffs as a wildfire prevention tool, including further examining de-energization policies and guidelines. In May 2019, the CPUC adopted its decision on Phase 1 of the proceeding (D. 19-05-042), adopting communication and notification guidelines for the electric IOUs to expand on those required in the July 2018 resolution. In August 2019, the CPUC opened a second phase of the proceeding to address identification and

communication with access and functional needs populations, communication with customers while the power is turned off, communication during deenergization, mitigation measures, coordination with relevant agencies (including first responders), and transmission-level deenergization.

September/October 2019. At the end of September 2019 and throughout October 2019, low-humidity and gusty wind conditions, resulted in an unprecedented widespread use of proactive power shutoffs across the state, within the service territories of each of the three large electric IOUs. In some cases, especially in the PG&E territory, these events bled into each other with customers experiencing extended days with loss of power, as the utility did not have enough time to complete inspections of the deenergized electric lines before the initiation of the next PSPS event. In total, over two million California residents endured the loss of power in communities located in about 40 of the state's 58 counties. Customer efforts to understand which locations lost power were hampered as electric IOU websites were down – including those of PG&E and SCE – due to the increased traffic to each of the utilities' websites. Customers who rely on electricity for medical devices struggled to find alternative sources of power or transportation to get to any of the limited electric IOU-established community resource centers, or to make contact with anyone who could help. The access and functional needs population, including those who rely on the use of wheelchairs or other electricity-dependent devices had to fend for themselves. State agencies and local agencies, including the California Health and Human Services Agency, county offices of emergency services, cities, and special districts (including first responders and water utilities) all struggled to respond to challenges created by the power shutoffs.

Medical baseline allowance. The medical baseline allowance provides residential customers who have qualifying medical conditions with additional energy allowance at the lowest tiered rate. Per the statute, IOUs are required to provide additional baseline allowance of gas or electric service for customers facing specified medical conditions, including life-threatening conditions or to customers who are on life-support. Additionally, the medical baseline allowance provides these households with advance notice of power outages since members of the households may be dependent on energy to survive. All three of the large electric IOUs currently administer medical baseline and require customers to subscribe to the program, including requiring a physician and other medical personnel to certify as to the medical condition.

California Alternate Rates for Energy (CARE) program. Existing law requires the CPUC to establish the CARE program, which provides rate assistance to low-income electric and gas customers with annual household incomes less than 200

percent of federal poverty guideline levels. The cost of this program is spread across multiple classes of customers. The set rates must effectively give a discount between 30 percent and 35 percent to eligible customers of electrical corporations with 100,000 or more customer accounts.

Vulnerable populations, Legislature passes SB 167 (Dodd). In fall of 2019, Governor Newsom signed SB 167 (Dodd, Chapter 403, Statutes of 2019) which authorized electric utilities to provide backup power sources to qualifying residents with medical conditions, who are low-income, and do not have another source of backup power. Currently, all three of the state's largest electric IOUs are piloting programs that deploy backup power to some of these customers. In some instances, the utilities are working with organizations that serve the access and functional needs population to better connect with eligible customers. Electric utilities are also incorporating grid-hardening and other strategies to reduce wildfire risks and detailed in their wildfire mitigation plans. Moreover, there are additional programs to target financial incentives or help deploy backup power to customers who are the most vulnerable to power shutoffs. These programs include the Self Generation Incentive Program (SGIP) which through recent CPUC decisions (D. 19-09-027 and D. 20-02-021) will help deploy one hundred million dollars in the equity resilience category to support energy storage systems that provide electricity when there is an outage. This SGIP allocation will target the highest fire threat districts and support vulnerable customers, including those with medical needs. The CPUC also has an active proceeding on microgrids and resiliency with the goal of deploying microgrids in areas that are prone to outages and wildfires. The CPUC also recently adopted Phase 2 of the proceeding on PSPS, which requires the utilities to collaborate with relevant stakeholders, including organizations representing the access and functional needs community and local governments to better locate and support the access and functional needs and medically vulnerable populations.

Comments

Need to protect the most vulnerable. After the debacle with power shutoffs in the fall of 2019, the Senate Committee on Energy, Utilities, and Communications heard testimony from witnesses who spoke of the shortcomings of the electric utility programs. Since then, there have been many encouraging developments (as noted above) to better address the needs of these customers. This bill requires electric utilities to work with organizations who have knowledge, expertise, trust, and relationships with the access and functional needs population. This bill will also require utilities to provide backup power (or resources for backup power) to customers who require electricity to sustain life, are low-income, live in the high

fire-threat districts and have no other backup power system. These requirements would result in increased costs to nonparticipating ratepayers. Nonetheless, the author is valid in his concerns to ensure utilities remain attentive and responsive to the needs of this population. However, electric utilities argue that a requirement to provide backup power for all customers that meet the eligibility criteria may be too costly to ratepayers, particularly when other programs are underway to help reduce the need for power shutoffs and help customers better prepare.

Related/Prior Legislation

SB 862 (Dodd, 2020) adds planned deenergization events, as defined, within the conditions that constitute a state of emergency; and recasts and adds new requirements of electrical corporations regarding protocols for these events. Among the recast and new requirements on electrical corporations are protocols to deal with individuals with access and functional needs, and requirements regarding coordination with local governments on the location and operation of community resource centers during deenergization events. The bill is currently pending consideration before the full Senate.

SB 378 (Weiner, 2019) requires numerous provisions related to an electrical IOU decision to proactively shut off power, including requiring reimbursements of specified costs, specified penalties for shutting off power, and other reporting. The bill is currently pending in the Assembly Committee on Utilities and Energy.

SB 167 (Dodd, Chapter 403, Statutes of 2019) required electrical corporations to include impacts on customers enrolled in specified programs as part of the protocols for deenergizing portions of their electric distribution system within their wildfire mitigation plans.

AB 1144 (Friedman, Chapter 394, Statutes of 2019) required the CPUC to support resiliency during a deenergization event for communities in high fire threat districts by allocating at least 10 percent (\$16.6 million) of the annual allocation of the SGIP in 2020 for the installation of energy storage and other distributed energy resources for customers that operate a critical facility or critical infrastructure in these communities.

SB 1338 (Hueso, Chapter 518, Statutes of 2018), among its provisions, required the CPUC to develop rules requiring each of the four largest energy utilities to demonstrate that they are working with the medical community to increase outreach to persons eligible for the medical baseline allowance.

SB 901 (Dodd, Chapter 626, Statutes of 2018) addressed numerous issues concerning wildfire prevention, response and recovery, including funding for mutual aid, fuel reduction and forestry policies, wildfire mitigation plans by electric utilities, and cost recovery by electric corporations of wildfire-related damages.

SB 1028 (Hill, Chapter 598, Statutes of 2016) required electric CPUC-regulated utilities to file annual wildfire mitigation plans and required the CPUC to review and comment on those plans.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, unknown but significant ongoing costs to the state as an energy utility ratepayer, likely in the hundreds of thousands of dollars annually (General Fund and special funds).

SUPPORT: (Verified 6/18/20)

California Solar & Storage Association

City of Berkeley

City of Orinda

Disability Rights California

National Association of Social Workers – California Chapter

Tenet Healthcare

Western Manufactured Housing Communities Association

OPPOSITION: (Verified 6/18/20)

Pacific Gas and Electric Company

San Diego Gas & Electric

Southern California Edison

ARGUMENTS IN SUPPORT: According to the author, “During PG&E’s PSPS event that began on October 9, 2019, nearly 30,000 medical baseline customers were affected by power outages. This event was a stark reminder that as wildfires and PSPS events increase, more medically vulnerable Californians will be put at risk of losing power to devices they need to survive. PG&E recently agreed to provide battery packs for some medical baseline customers through groups that help those with disabilities. Their current plan will provide only 500 of these packs, but more than 100,000 people have signed up for the utility’s medical baseline program. By requiring electrical corporations to provide resources for their customers that rely on life-saving devices, this bill protects the most

vulnerable Californians. SB 801 ensures that medical baseline customers that rely on electrically powered medical devices, or need refrigerated medications, will not be put at risk during PSPS events.”

ARGUMENTS IN OPPOSITION: In opposition to this bill, the three electric IOUs state that this bill is not necessary and does not consider the comprehensive approach the utilities are taking to address wildfire risks. Specifically, the utilities note the numerous measures they are instituting to reduce wildfire risks which will reduce the need for power shutoffs over time, including upgrading equipment, undergrounding in some areas, other electric grid hardening, sectionalizing of lines, and other backup power for some circuits. The utilities express concerns regarding the potential increased costs to their ratepayers if required to buy backup power for all eligible customers. Lastly, the utilities note that the active CPUC proceeding with a proposed decision out for public comment and expected to be adopted in the coming month or so.

Prepared by: Nidia Bautista / E., U., & C. / (916) 651-4107
6/19/20 16:41:05

**** END ****

THIRD READING

Bill No: SB 862
Author: Dodd (D)
Amended: 5/20/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 12-0, 5/14/20
AYES: Hueso, Moorlach, Bradford, Chang, Dahle, Dodd, Hertzberg, Hill,
McGuire, Rubio, Stern, Wiener
NO VOTE RECORDED: Skinner

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Planned power outage: public safety

SOURCE: California Association of Public Authorities for IHSS
Disability Rights California

DIGEST: This bill (1) adds planned deenergization events, as defined, within the conditions that constitute a state of emergency; and (2) adds new requirements of electrical corporations regarding protocols for these events. Among the new requirements on electrical corporations are protocols to address the needs of individuals with access and functional needs, and requirements regarding coordination with local governments on the location and operation of community resource centers during deenergization events.

ANALYSIS:

Existing law:

- 1) Establishes the California Emergency Services Act, authorizes the governor to proclaim a state of emergency, and local officials and local governments to proclaim a local emergency, when specified conditions of disaster or extreme peril to the safety of persons and property exist, and authorizes the governor or

the appropriate local government to exercise certain powers in response to that emergency. (Government Code §8550 et seq.)

- 2) Defines the terms “state of emergency” and “local emergency” to mean a duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by, among other things, fire, storm, or riot. (Government Code §8558)
- 3) Requires each electrical corporation to annually prepare a wildfire mitigation plan and to submit its plan to the commission for review and approval, as specified. Following approval, the California Public Utilities Commission (CPUC) is required to oversee compliance with the plan. Requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, and protocols related to mitigating the public safety impacts of those protocols, including impacts on customers who receive medical baseline allowances. (Public Utilities Code §8386)
- 4) Authorizes an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance who meets specified requirements, including that the customer is not eligible for backup electrical resources provided through medical services, medical insurance, on community resources. (Public Utilities Code §8386(c)(6)(C))

This bill:

- 1) Adds a planned deenergization event, as defined, within the definition of “sudden and severe energy shortage” conditions that constitute a state of emergency and a local emergency.
- 2) Requires an electrical corporation, as part of its public safety mitigation protocols, to include protocols that deal specifically with access and functional need individuals, as defined.
- 3) Requires an electrical corporation to coordinate with local governments in its service territory to identify sites within those jurisdictions where community resource centers can be established and operated during a deenergization event and the level of services that will be available at those centers, as those terms are defined. Requires the electrical corporation to perform additional duties in coordination with local governments, including performing any necessary

electrical upgrades to ensure that a mobile backup generator can be located at, and provide the necessary electricity for, the community resource center during a deenergization event.

Background

Deenergizing electric lines. Generally, electric utilities attempt to maintain power and ensure continued reliability of the flow of power. However, as recent catastrophic fires have demonstrated, the risk of fire caused by electric utility infrastructure can pose a great risk, perhaps greater than the risks of turning off the power to certain circuits. As a safety consideration, electric utilities have the ability and authority to deenergize electric lines in order to prevent harm or threats of harm. However, deenergizing electric lines can result in its own safety risks, as households, businesses, traffic signals, communication systems, critical facilities, water treatment facilities, emergency services and others lose electricity. Therefore, efforts to deenergize electric lines must consider the potential harm of the energized lines causing a wildfire against the safety hazards associated with eliminating electricity to the areas served by the electric line(s).

Recent history with proactive power shutoffs. Although there is some history with proactive power shutoffs, their use as a tool to prevent electric utility equipment from sparking fires is a more recent development that has expanded and grown in-use due to recent catastrophic wildfires ignited by utility infrastructure. The practice to proactively shut off power began with San Diego Gas & Electric (SDG&E) after several electric utility infrastructure-ignited catastrophic fires in 2007. Although the use of proactive power shutoffs were met with opposition and concerns about its use, ultimately the CPUC acknowledged SDG&E's authority to deenergize lines in order to protect public safety, noting this authority in Public Utilities Code §451 and §399.2. Following catastrophic fires in 2017 (including Thomas and North Bay Fires), in July 2018, the CPUC adopted a staff resolution (ESRB-8) to extend the reasonableness, public notification, mitigation and reporting requirements in the SDG&E decision to all electric investor-owned utilities (IOUs), including Pacific Gas and Electric (PG&E) and Southern California Edison (SCE). Per the CPUC requirements, after a deenergization event, now coined a Public Safety Power Shutoff (PSPS) event, the utility must inspect the lines of the circuits that were turned off before it can restore power. The CPUC also requires utilities to meet with local communities before employing the power shutoff practice in a particular area, requires feasible and appropriate customer notifications prior to a deenergization event, and requires notification to the CPUC after a decision to deenergize facilities has been made.

SB 901 requires power shutoff protocols. SB 901 (Dodd, Chapter 626, Statutes of 2018) included a requirement to adopt protocols for deenergization events. In December 2018, the CPUC opened a rulemaking proceeding (R. 18-12-005) to delve more deeply into the use of proactive power shutoffs as a wildfire prevention tool, including further examining de-energization policies and guidelines. In May 2019, the CPUC adopted its decision on Phase 1 of the proceeding (D. 19-05-042), adopting communication and notification guidelines for the electric IOUs to expand on those required in the July 2018 resolution. In August 2019, the CPUC opened a second phase of the proceeding to address identification and communication with access and functional needs populations, communication with customers while the power is turned off, communication during deenergization, mitigation measures, coordination with relevant agencies (including first responders), and transmission-level deenergization.

September/October 2019. At the end of September 2019 and throughout October 2019, low-humidity and gusty wind conditions, resulted in unprecedented and widespread use of proactive power shutoffs across the state by three largest electric utilities. In some cases, especially in the PG&E territory, these events bled into each other with customers experiencing extended days with loss of power, as the utility did not have enough time to complete inspections of the deenergized electric lines before the initiation of the next PSPS event. In total, over two million California residents endured the loss of power in communities located in about 40 of the state's 58 counties. Customer efforts to understand what infrastructure and which locations lost power were hampered as electric IOU websites were down – including those of PG&E and SCE – due to the increased traffic to each of the utilities' websites. There were also reports about unreliable maps and confusing information regarding the affected geographic areas. This confusion was especially acute in the PG&E territory. Customers who rely on electricity for medical devices struggled to find alternative sources of power or transportation to get to any of the limited electric IOU established community resource centers available to them, or to make contact with anyone who could help. The access and functional needs population, including those who rely on the use of wheelchairs or other electricity-dependent devices were largely left to fend for themselves. Additionally, state agencies and local agencies, including the California Health and Human Services Agency, county offices of emergency services, cities, and special districts (including first responders and water utilities) all struggled to respond to challenges created by the power shutoffs.

Declaring a State of Emergency. The California Emergency Services Act (CESA) was enacted in 1970 and established the Governor's Office Emergency Services (OES) with a director reporting to the governor. The office was given

responsibility to coordinate statewide emergency preparedness, post emergency recovery and mitigation efforts, and the development, review, approval, and integration of emergency plans. CESA provides the governor the authority to proclaim a state of emergency in an area affected or likely to be affected when: a) conditions of disaster or extreme peril exist; b) he or she is requested to do so upon request from a designated local government official; or c) he or she finds that local authority is inadequate to cope with the emergency. Local governments may also issue local emergency proclamations, which is a prerequisite for requesting a Governor's Proclamation of a State of Emergency. CESA provides numerous powers and responsibilities, including authorizing extraordinary police powers, limited immunity for emergency actions of public employees, and authorizes the issuance of order and regulation to protect life and property, among others. CESA also provides for the opportunity for local governments to seek reimbursement from the state for actions taken to address the emergency.

Vulnerable populations, legislature passes SB 167 (Dodd). In fall of 2019, Governor Newsom signed SB 167 (Dodd, Chapter 403, Statutes of 2019) which authorizes electric utilities to provide backup power sources to qualifying residents with medical conditions, who are low-income, and do not have another source of backup power. Currently, all three of the state's largest electric IOUs are piloting programs that deploy backup power to some of these customers. In some instances, the utilities are working with organizations that serve the access and functional needs population to better connect with eligible customers. Electric utilities are also incorporating grid-hardening and other strategies to reduce wildfire risks and detailed in their wildfire mitigation plans. Moreover, there are additional programs to target financial incentives or help deploy backup power to customers who are the most vulnerable to power shutoffs. These programs include the Self Generation Incentive Program (SGIP). Recent CPUC decisions (D. 19-09-027 and D. 20-02-021) will help deploy one hundred million dollars in the equity resilience category to support energy storage systems that provide electricity when there is an outage – including a PSPS. This SGIP allocation will target the highest fire threat districts and support vulnerable customers, including those with medical needs. The CPUC also has an active proceeding on microgrids and resiliency with the goal of deploying microgrids in areas that are prone to outages and wildfires. The CPUC also recently adopted Phase 2 of the proceeding on PSPS, which requires the utilities to collaborate with relevant stakeholders, including organizations representing the access and functional needs community and local governments to better locate and support the access and functional needs and medically vulnerable populations.

Community Resource Centers (CRCs). During the power shutoff events in the fall of 2019 there were numerous complaints and concerns from residents and local governments about the location and operations of community resources centers established by the electric utilities, especially those operated by PG&E. Local governments were upset to learn that many CRCs were temporary tents in areas unfamiliar to the local residents or located far from the affected population. The recently released CPUC proposed decision in phase 2 of the PSPS proceeding proposes numerous requirements regarding CRCs, including the need to work with local governments on their locations, maintaining operations during specified hours (8am to 10pm) during a power shutoff and requiring specified support and services.

Comments

Preparing for the loss of power. Power shutoffs are intended as a utility's last resort to mitigate the risk of fire. However, the growing threats of catastrophic wildfires and recent experience of the devastation and liability posed by the wildfires means the utility's voluntary use of power shutoffs is likely to increase. Most residents are not likely to be prepared for a power outage, particularly if the events endure for multiple days. The access and functional needs population can be particularly vulnerable to the loss of power as it can be detrimental to their safety and mobility. This bill would authorize electric utilities to explicitly consider the needs of the access and functional needs population in preparation and during power shutoffs. This bill would also prescribe operational requirements for electric IOU-initiated community resource centers during deenergization events. The electric IOUs oppose these requirements arguing they are circumventing the recently adopted CPUC requirements for deploying and operating community resource centers.

Declaring an emergency. This bill provides that a proactive power shutoff by an electric IOU would be considered a qualifying condition to declare a local or state emergency. The power shutoff events in the fall of 2019 proved to be an extraordinary burden on local and state governments who were forced to scramble with their own resources to respond to the events. By allowing proactive power shutoffs to be an eligible condition to declare an emergency, local governments could benefit local governments by allowing them to recoup costs that they might bear during these events. These costs could be substantial. However, there is hope that the events of last fall would not be repeated. Nonetheless, local governments are valid in their concerns that local and state government resources could be impacted, once again, in future events.

Related/Prior Legislation

SB 801 (Glazer, 2020) establishes new requirements on electrical corporations regarding deployment of backup electrical resources to customers receiving medical baseline allowance, if the customer meets specified conditions, and require an electrical corporation to develop its program to provide backup electrical resources in consultation with community disability rights groups or other local disability rights advocates. The bill is pending consideration before the full Senate.

SB 378 (Weiner, 2019) requires numerous provisions related to an electrical IOU decision to proactively shut off power, including requiring reimbursements of specified costs, specified penalties for shutting off power, and other reporting. The bill is currently pending in the Assembly Committee on Utilities and Energy.

SB 167 (Dodd, Chapter 403, Statutes of 2019) required electrical corporations to include impacts on customers enrolled in specified programs as part of the protocols for deenergizing portions of their electric distribution system within their wildfire mitigation plans.

SB 532 (Dodd, Chapter 557, Statutes of 2018) added “cyberattacks” to the list of conditions that are named in the Emergency Services Act that may be cited to support the proclamation of a state of emergency or local emergency.

SB 901 (Dodd, Chapter 626, Statutes of 2018) addressed numerous issues concerning wildfire prevention, response and recovery, including funding for mutual aid, fuel reduction and forestry policies, wildfire mitigation plans by electric utilities, and cost recovery by electric corporations of wildfire-related damages.

SB 1028 (Hill, Chapter 598, Statutes of 2016) required electric CPUC-regulated utilities to file annual wildfire mitigation plans and requires the CPUC to review and comment on those plans.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Committee on Appropriations:

- Unknown but significant ongoing costs to the state as an energy utility ratepayer, likely in the tens or hundreds of thousands of dollars annually

(General Fund and special funds) due to potential increases in electricity rates as a result of this bill.

- Unknown but significant cost pressure for the state to reimburse local governments for certain expenses incurred during states of emergency related to Public Safety Power Shutoff (PSPS) events.

SUPPORT: (Verified 6/18/20)

California Association of Public Authorities for IHSS (co-source)

Disability Rights California (co-source)

Association of Regional Center Agencies

California Alliance for Retired Americans

California Community Choice Association

California Hospital Association

California In-Home Supportive Services Consumer Alliance

California State Association of Counties

California State Sheriffs' Association

City of Orinda

City of San Jose

City of Thousand Oaks

Coalition of California Welfare Rights Organizations

County Welfare Directors Association of California

East Bay Municipal Utility District

Elsinore Valley Municipal Water District

Health Officers Association of California

Marin Clean Energy

Marin County Board of Supervisors

Napa County Board of Supervisors

National Association of Social Workers-California Chapter

Rural County Representatives of California

Solano County Board of Supervisors

The Utility Reform Network

UDW/AFSCME, Local 3930

Western Manufactured Housing Communities Association

OPPOSITION: (Verified 6/18/20)

San Diego Gas & Electric

Southern California Edison

ARGUMENTS IN SUPPORT: According to the author:

Deenergization triggers many activities needed to protect public health and safety for the duration of the event. Those activities are often coordinated through and by county emergency operation centers (EOCs). EOCs are activated as soon as an IOU issues a notice of possible deenergization, and remains active until power is restored and/or the notice is rescinded. EOCs are expensive to run. Counties would like to recover some of those costs through the California Disaster assistance Act (CDAA). In order to recover costs under the CDAA an event has to be covered under the state Emergency Assistance Act (ESA). It is unclear whether a pre-planned deenergization is covered by the ESA. SB 862 makes clear that the ESA includes deenergizations.

ARGUMENTS IN OPPOSITION: In opposition to this bill, SDG&E and SCE express agreement with the spirit of this bill to mitigate the impact of power shutoffs, but raises concerns that this bill is too rigid in its requirements and conflicts with ongoing regulatory proceedings seeking to address the same issues. SDG&E states this bill requirements could have several unintended consequences. Moreover, SDG&E cites many of its efforts to work collaboratively with stakeholders, including local governments and organizations serving access and functional needs in their service territory to address the issues of siting of community resource centers, providing backup power, and others.

Prepared by: Nidia Bautista / E., U., & C. / (916) 651-4107
6/19/20 16:41:06

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THIRD READING

Bill No: SB 865
Author: Hill (D)
Amended: 6/2/20
Vote: 21

SENATE GOVERNMENTAL ORG. COMMITTEE: 13-0, 5/12/20
AYES: Dodd, Wilk, Allen, Archuleta, Bradford, Chang, Galgiani, Hill, Hueso,
Nielsen, Portantino, Rubio, Wiener
NO VOTE RECORDED: Borgeas, Glazer, Jones

SENATE APPROPRIATIONS COMMITTEE: 5-0, 6/9/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NO VOTE RECORDED: Bates, Jones

SUBJECT: Excavations: subsurface installations

SOURCE: Author

DIGEST: This bill requires new subsurface installations be tagged with geographic information systems (GIS) coordinates, as specified; renames the California Underground Facilities Safe Excavation Board as the “Dig Safe Board” (Board); and requires an excavator discovering or causing damage to a subsurface installation that results in an emergency to immediately call “911,” as specified.

ANALYSIS:

Existing law:

- 1) Creates, pursuant to the Dig Safe Act of 2016 (Act), the Board within the Office of the State Fire Marshal (SFM). The Act subjects the board to review by the appropriate policy committees of the Legislature.
- 2) Requires the Board to perform various duties relating to the protection of subsurface installations, as specified.

- 3) Subjects any operator or excavator who violates the Act to a civil penalty, as specified.

This bill:

- 1) Provides that the Board shall also be known as the “Dig Safe Board.”
- 2) Requires a Regional Notification Center (RNC) to include two excavator representatives on its board.
- 3) Requires an RNC to provide notification records to the Board quarterly and to provide notifications of damage to the Board within five business days of receipt at the RNC.
- 4) Requires all new subsurface installations after January 1, 2021, be tagged with GIS coordinates, as specified.
- 5) Exempts from the GIS tagging and record keeping requirements any oil and gas flowlines three inches or less in diameter that are located within the administrative boundaries of an oil field, as specified.
- 6) Requires an excavator discovering or causing damage to a subsurface installation that results in an emergency to immediately call “911.” After calling “911,” the excavator shall immediately notify the subsurface operator, and notify an RNC within two hours, as specified.
- 7) Authorizes enforcement of the Act by specified agencies through their own investigations, and authorizes the Board to collect penalties imposed on persons subject to its jurisdiction, as specified.
- 8) Moves the Board out of the SFM, commencing on January 1, 2022, and into the Office of Energy Infrastructure Safety within the Natural Resources Agency, as specified.
- 9) Authorizes the Board to offer violators, for violations that are neither egregious nor persistent, the option of completing an educational course in lieu of paying a fine, as specified.

Background

Purpose of the bill. According to the author's office, "SB 865 builds upon my previous efforts to strengthen safe excavation practices in our state. Excavating safely requires the cooperation of many different individuals, and there are common sense reforms we can enact to better facilitate that cooperation and communication. Most importantly, these simple reforms will save lives."

Call Before You Dig. In 1986, a southern California excavating crew incorrectly assumed that no subsurface infrastructure existed at their construction site and as a result, a gas main was struck and exploded, killing a 23-year old crew member. That incident, together with others like it across the country, led to the adoption of California's "Call Before You Dig" law in 1989, AB 73 (Elder, Chapter 928, Statutes of 1989).

The law generally requires individuals to contact an RNC prior to planned excavations, and requires any utility or other operator with subsurface installations in the vicinity of a planned excavation to go to the site and clearly identify and mark all underground infrastructure.

In California, the two RNCs are Underground Service Alert of Northern California and Nevada, also known as USA North 811; and, Underground Service Alert of Southern California, also known as DigAlert. Collectively, the two centers are commonly referred to as 811 centers.

Dig Safe Act of 2016. SB 661 (Hill, Chapter 809, Statutes of 2016) enacted the Dig Safe Act of 2016, amending the existing "Call Before You Dig" statute in response to a series of fatal incidents, including a dig-in incident (an industry term for when construction workers accidentally hit gas lines) in Fresno where an excavator punctured a 10-inch natural gas pipeline while operating heavy equipment at a road construction site, killing one person and injuring 12 others and temporarily closing down Highway 99. SB 661, among other things, required a person planning to conduct an excavation to contact the appropriate RNC prior to commencing that excavation regardless of whether the excavation would be conducted in an area that is known, or reasonably should be known, to contain subsurface installations.

This bill renames the "California Underground Facilities Safe Excavation Board" as the "Dig Safe Board," and – commencing on January 1, 2022 – removes the Board from under the SFM and establishes it within the Office of Emergency

Infrastructure Safety within the Natural Resources Agency. The author argues that the Office of Emergency Infrastructure Safety better aligns with the Board's mission and operational functions, however that particular office had not yet been established when the Board was initially created. Additionally, this bill requires each of the state's two RNCs to include two exactor representatives on their boards, and makes various conforming changes to the Dig Safe Act.

Geographic information systems. GIS is a system of computer software, hardware, data, procedures, and personnel combined to help manipulate, analyze, and present information tied to a geographic location. This information provides organizations and individuals the ability to analyze, visualize, manage, disseminate, and interpret geographical data, and the complex geographic relationship between them. RNCs must be able to accurately and precisely identify the dig site location, which often includes areas of recent construction.

This bill requires, commencing January 1, 2021, all new subsurface installations be tagged with GIS coordinates and maintained as permanent records of the operator. Existing law requires operators to amend, update, maintain, and preserve all plans and records for its subsurface installations as that information becomes known, and requires that the records be turned over to the new operator in the instance of a change in ownership.

This bill exempts from the new GIS tagging and record keeping requirements oil and gas flowlines three inches or less in diameter that are located within the administrative boundaries of an oil field. Small diameter flowlines located in active oil fields are frequently moved to accommodate new drilling and facility installation which could result in the development of a database with outdated and inaccurate information, thus increasing the potential for incidents to occur.

Damage to subsurface installations. As noted above, damage to subsurface infrastructure can lead to catastrophic and deadly emergencies. Existing law requires an excavator to call "911" emergency services upon discovering or causing damage to either of the following: a natural gas or hazardous liquid pipeline in which the damage results in the escape of any flammable, toxic, or corrosive gas or liquid; or a high priority subsurface installation of any kind.

This bill repeals that provision of law, and instead requires any excavator discovering or causing damage to a subsurface installation that results in an emergency to immediately call "911" emergency services; and, after calling "911" emergency services to immediately notify the subsurface installation operator.

Within two hours of discovering or causing damage, the excavator will be required to notify the RNC.

Education in lieu of fiscal penalties. Under existing law, the Board is required to grant the use of the moneys in the Safe Energy Infrastructure and Excavation Fund (Fund) to fund public education and outreach programs designed to promote excavation safety around subsurface installations and targeted towards specific excavator groups, giving priority to those with the highest awareness and education needs, including, but not limited to, homeowners.

This bill deletes those education and outreach program provisions, and instead, requires the Board to offer violators of the Act, that are neither egregious nor persistent, to offer violators the option of completing an educational course in lieu of paying a fine. This bill makes moneys in the Fund available to the Board in order to fund the educational course, subject to appropriation by the Legislature.

Related/Prior Legislation

AB 754 (Grayson, Chapter 494, Statutes of 2019) authorized the California Department of Technology to provide access to Geographic Information Systems data to an RNC, as specified.

AB 1166 (Levine, Chapter 453, Statutes of 2019) required every operator of a subsurface installation to supply an electronic positive response through the RNC before the excavation start date, as specified.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the Board estimates costs of up to \$140,000 Safe Energy Infrastructure and Excavation Fund in the first year and \$75,000 ongoing for infrastructure technology improvements to intake quarterly notification records as required by the bill.

Any costs associated with moving the Board from the Office of the State Fire Marshal to the Office of Energy Infrastructure Safety within the Natural Resources Agency are anticipated to be minor and absorbable.

The California Public Utilities Commission does not anticipate a fiscal impact.

SUPPORT: (Verified 6/10/20)

City of San Carlos

League of California Cities

Underground Service Alert of Northern California and Nevada (USA North 811)

OPPOSITION: (Verified 6/10/20)

Underground Service Alert of Southern California

ARGUMENTS IN SUPPORT: According to the League of California Cities, “[e]xcavations near and around critical underground infrastructure continue to pose safety risks to Californians due to insufficient communication. SB 865 addresses some of these concerns, increasing communication by requiring regional notification centers, which provide warnings of excavations close to existing subsurface installations, to share damage reports with the Dig Safe Board within five days, and provide quarterly reports on all notifications. Notably, SB 865 requires operators to map any new subsurface installations with GIS coordinates beginning January 1, 2021.”

ARGUMENTS IN OPPOSITION: Underground Service Alert of Southern California, commonly referred to as DigAlert, writes that it has “adopted an “Oppose Unless Amended” position on SB 865. As you know, DigAlert is the regional notification center serving excavators and utility companies in the nine Southern California counties of Imperial, Inyo, Los Angeles, Orange, San Bernardino, San Diego, Santa Barbara, Riverside, and Ventura.”

Prepared by: Brian Duke / G.O. / (916) 651-1530
6/10/20 13:25:03

**** END ****

THIRD READING

Bill No: SB 872
Author: Dodd (D), et al.
Introduced: 1/21/20
Vote: 21

SENATE INSURANCE COMMITTEE: 9-2, 5/14/20

AYES: Rubio, Archuleta, Dodd, Galgiani, Glazer, Hueso, Mitchell, Portantino, Roth

NOES: Jones, Moorlach

NO VOTE RECORDED: Bates, Borgeas

SUBJECT: Residential property insurance: state of emergency

SOURCE: California Department of Insurance

DIGEST: This bill grants to commercial insureds the same minimum time limits granted to homeowners to collect full replacement cost value when a structure is damaged or destroyed by an event declared a “state of emergency”; prohibits an insurer from deducting the land value from the replacement cost when a homeowner or commercial insured rebuilds or purchases an existing structure on another property; streamlines the process for residential property insurance claims and adds consumer protections to the process for settling personal contents and additional living expense (ALE) claims; and requires insurers to provide a 60-day grace period for nonpayment in an area impacted by a declared state of emergency.

ANALYSIS:

Existing law:

Time to Collect Replacement Value

- 1) Requires property insurance to pay the actual cash value of the damaged property until it has been repaired, rebuilt, or replaced, and establishes minimum periods to collect the full replacement cost of a structure once the insurer has made a first payment.

- a) Grants the insured at least 12 months to collect the full replacement cost of a damaged structure.
- b) If the loss is due to an event that was declared a “state of emergency,” grants an insured homeowner at least 36 months, as well as one or more six-month extensions, if the insured acting in good faith encounters delays in the reconstruction process.

Additional Living Expense Coverage (ALE)

- 2) Requires homeowners insurance to provide ALE for at least 24 months if the loss resulted from an event declared to be a state of emergency and requires extensions of up to 12 additional months, for a total of 36 months, if the insured acting in good faith encounters delays in the reconstruction process.

Relocation

- 3) Prohibits homeowners insurance, in the event of a total loss, from limiting or denying payment of building code upgrade cost or the replacement cost on the basis that the insured rebuilds, or purchases an existing home, at a new location.

This bill:

Time to Collect Replacement Value

- 1) Grants commercial property insureds the same minimum time limits to collect full replacement value as those that apply to homeowners.

Additional Living Expense Coverage

- 2) Revises or clarifies the rules governing ALE benefits for insureds who have lost their homes or cannot live in their homes.
 - a) Requires ALE to cover all reasonable expenses incurred by the insured to maintain a comparable standard of living, including housing, furniture rental, food, transportation, storage, and boarding of pets and noncommercial livestock.
 - b) Authorizes an insured to collect the fair rental value of the dwelling in lieu of itemized expenses.
 - c) If the loss resulted from an event declared to be a state of emergency, requires ALE to provide the following:

- i) Expenses accrued after the direct physical loss has been remediated if the premises remains uninhabitable because of direct damage to neighboring premises or public infrastructure that was covered by an insured peril.
- ii) For claims filed after January 1, 2021, an advance payment of at least four months if the home was a total loss.

Personal Contents Coverage

- 3) Revises the rules applicable to claims filed after January 1, 2021, that govern claims for lost or damaged personal property, i.e. “contents coverage,” (appliances, furniture, clothing, etc.) resulting from a declared state of emergency and requires the insurer to:
 - a) Provide an advance payment of no less than 25% of the policy limit for contents without an inventory of lost items but allows the insurer to require proof for additional payments;
 - b) Accept an inventory in a reasonable form that provides substantially the same information as the insurer’s form but allows the insurer to request additional information if reasonable; and
 - c) Accept an inventory of contents that includes groupings of personal property, including clothing, books, food items, etc.

Relocation

- 4) Revises rules applicable to claims where the insured chooses to build a new home or purchase an existing home on a different piece of property.
 - a) Prohibits the insurer from deducting the value of the new land from the replacement cost.
 - b) Applies the new rules regarding the land value deduction, as well as the existing rule against deducting building code upgrade coverage and replacement cost, to commercial properties.

Grace Period

- 5) Requires an insurer to offer a 60-day grace period for nonpayment of premium for policies on property located in areas affected by a declared state of emergency.
- 6) Declares that the provisions of this bill are severable.

Background

In 2017 and 2018, California experienced the largest and most destructive wildfires in its history. Following those fires, the California Department of Insurance (CDI) requested that insurers follow voluntary procedures designed to expedite claims for impacted homeowners. This bill codifies some of those procedures and requires the insurer to provide advance payments of a portion of the ALE and personal contents coverage after a state of emergency; accept alternative forms of inventories for claims for lost contents; and provide a 60-day grace period for nonpayment of premium.

This bill also creates or expands other consumer protections:

- Expands minimum time periods to collect replacement cost value to commercial properties;
- More explicitly defines and expands what is covered under ALE;
- Expands the rules that apply to insureds that relocate and applies those rules to commercial properties.

Time to Collect Replacement Cost. Existing law provides a homeowner a minimum of 36 months to collect full replacement cost, as well as extensions for good cause, following a declared state of emergency. This bill would apply the extensions to commercial properties as well.

CDI argues that, prior to legislation in 2018 that extended the time limit to 36 months from 24, the minimum time to collect full replacement cost along with good cause extensions applied to commercial properties as well. According to CDI, the 2018 legislation unintentionally replaced the original generic language providing the extensions with new language that only applies to residential properties. Some insurance trade representatives argue that the committee analyses and stakeholder discussions regarding the original legislation (AB 2199, Kehoe, Chapter 311, Statutes of 2004) did not include commercial properties.

Additional Living Expenses (ALE). ALE helps homeowners pay for the additional costs of living outside the home while waiting to rebuild, repair, or replace the home after it has been physically damaged. In addition to codifying some expedited claims procedures, this bill provides homeowners with more ALE options and requires the insurer to:

- Provide insureds the option to collect the fair rental value of the lost property rather than seek reimbursement. Insurers may provide ALE in the form of reimbursement so that the insured must incur the expenses first and provide

receipts to collect the benefit. This bill would require insurers to offer claimants the option to collect the fair rental value of the lost home on a monthly basis instead of documenting monthly expenses.

- Cover “all reasonable additional expenses incurred by the insured to maintain a comparable standard of living,” including housing, furniture rental, food, transportation, storage, and boarding of pets and noncommercial livestock.
- Provide ALE when the home remains uninhabitable even though the damage has been repaired. ALE usually only covers expenses while the home remains uninhabitable due to covered damage. This bill fills in a gap in coverage where the property has been repaired but remains unusable for some other reason, such as a lack of electricity or water.

Relocation. After a total loss, the insured may rebuild the existing home or purchase another home at a different location. Some insurers have been deducting the value of the new land from the replacement cost value when a homeowner purchases elsewhere. This practice is consistent with that used in auto insurance when a vehicle is “totaled” and is intended to avoid overcompensating the insured; the insurer pays the fair market value of the vehicle but takes ownership.

However, the practical effect of deducting the land value may force the insured to purchase a lesser value dwelling, borrow money, or come up with cash out of their own pockets. This bill prohibits an insurer from deducting the value of the land. It also applies that rule to commercial properties and extends to commercial properties the rules against limiting recovery because the insured chooses to relocate.

Potential Impact on Rates. According to CDI, the provisions implementing the expedited procedures and time limit extensions should not impact rates significantly because they only provide what the insured would have received anyway. Several insurance trade associations disagree and argue that this measure will significantly expand the kinds of expenses that must be reimbursed, such as the circumstances under which extended ALE payments will be required, while simultaneously reducing the level of scrutiny for contents claims.

Because CDI anticipates that only a few consumers will take advantage of some of the changes offered in this bill, such as those who move to a new location, and that those changes will have a minimal impact (assuming that consumer behavior does not change because of this bill or other factors).

The effect of some changes, like the expansion of ALE to cover expenses after a damaged home has been repaired, is less clear. CDI lacks the necessary data to provide a reliable impact estimate. Theoretically, savings from faster claims settlement and lower ALE costs could offset, at least in part, additional costs.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/17/20)

California Department of Insurance (source)
Consumer Federation of California
Rural County Representatives of California
United Policyholders

OPPOSITION: (Verified 5/17/20)

American Property Casualty Insurance Association
National Association of Mutual Insurance Companies
Pacific Association of Domestic Insurance Companies
Personal Insurance Federation of California

ARGUMENTS IN SUPPORT: Rural County Representatives of California (RCRC) writes in support that residents in RCRC member counties have been experiencing these difficulties for years in relation to high severity wildfires such as the Butte, Rim, and Valley Fires, and more recently in disastrous fires such as the Tubbs Fire, Camp Fire and Kincade Fire. These recent fires have only underscored the need for relief to property owners suffering losses who are trying to move on and recover some sense of normalcy after such a devastating event.

ARGUMENTS IN OPPOSITION: Opponents explain that historic financial losses place tremendous upward pressure on the price of homeowners insurance, and have forced many insurers to safeguard their solvency (and their ability to pay claims in the event of another disaster) by limiting the amount of insurance they sell in high fire-risk areas of the state. They argue that, absent adequate rates that reflect the new costs imposed by this bill, SB 827 may exacerbate the homeowners insurance availability challenges in high fire-risk areas of the state.

Prepared by: Hugh Slayden / INS. / (916) 651-4110
5/19/20 12:24:59

**** END ****

THIRD READING

Bill No: SB 895
Author: Archuleta (D)
Introduced: 1/28/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 12-0, 5/14/20
AYES: Hueso, Moorlach, Bradford, Chang, Dahle, Dodd, Hertzberg, Hill,
McGuire, Rubio, Stern, Wiener
NO VOTE RECORDED: Skinner

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Energy: zero-emission fuel, infrastructure, and transportation
technologies

SOURCE: Ballard Power Systems

DIGEST: This bill modifies the types of fuel and transportation technologies for which the California Energy Commission (CEC) must provide research and development support to focus on zero-emissions fuels, infrastructure, and technologies.

ANALYSIS:

Existing law:

- 1) Establishes various research and development duties under the CEC, including programs to support the development of low- and zero-emission fuels and transportation technologies. (Public Resources Code §§25600 – 25619)
- 2) Requires the CEC to provide technical assistance and support for the development of petroleum diesel fuels that are as clean as or cleaner as alternative clean fuels and clean diesel engines. This technical support must be

provided within the limits of available funds and can include research, development, and demonstration programs. (Public Resources Code §25617(b))

- 3) Prohibits the use of heavy-duty motor vehicles that emit excessive smoke and requires the California Air Resources Board (ARB) to establish emissions limitations for heavy-duty diesel motor vehicles. Owners of vehicles that fail to meet these limitations may be assessed penalties. (Health and Safety Code §44011.6)
- 4) Establishes the Diesel Emissions Reduction Fund (DERF) to collect penalties from non-compliant heavy-duty diesel motor vehicles and authorizes the CEC to use monies from the DERF to support research, development, and demonstration programs for cleaner diesel fuels and technologies. (Health and Safety Code §44011.6)

This bill deletes the requirement that the CEC must provide technical assistance and support for cleaner petroleum diesel fuels and instead requires the CEC to provide this assistance and support for zero-emissions fuels, fueling infrastructure, and transportation technologies.

Background

The development of the Diesel Emissions Reduction Fund (DERF). Between 1988 and 1989, the ARB established standards to limit excessive smoke emitted by heavy-duty motor vehicles in California. In 1988, the ARB created the Heavy-Duty Vehicle Inspection and Maintenance Program (HDVIMP) to inspect heavy-duty vehicles at California border crossings, weigh stations, and other selected locations for compliance with the ARB's standards. The ARB also developed other standards for limiting and testing excessive smoke from heavy-duty vehicles. In 1989, the Legislature passed AB 1107 (Moore, Chapter 940, Statutes of 1989), which established the DERF to collect penalties paid by owners of heavy-duty diesel vehicles that fail to meet ARB emissions standards. The bill also required the CEC to provide technical assistance and support to cleaner diesel transportation options and authorized the CEC to use monies appropriated from the DERF to support cleaner diesel research, development, and demonstration projects.

Changes in technology have limited the use of DERF. This bill allows the CEC to use remaining monies in the DERF account for research, development, and demonstration projects for zero-emission fuels and infrastructure. While existing

law permits the CEC to use monies in the DERF to support research, development, and demonstration of clean diesel fuels and technologies, changes in the transportation market and fuel emissions research has limited the CEC's ability to use the DERF to support clean diesel projects. In addition to advancements in diesel fuel production and engine technologies, alternative fuel engines have also been replacing diesel engines. The CEC has no data on DERF-funded projects since 1989. Between 1991 and 2003, the DERF account made \$3.124 million in expenditures, and no appropriations or expenditures have been made from the DERF account since the 2002-03 fiscal year. As of March 2020, the DERF had an estimated remaining balance of \$4.6 million.

This bill's repurposing of DERF monies is consistent with state zero-emissions vehicle (ZEV) goals. In January 2018, the governor issued Executive Order B-48-18. This order called for deploying five million ZEVs in California by 2030. The order also increased ZEV infrastructure targets. Specifically, the order establishes a goal of installing 200 hydrogen-fueling stations and 250,000 electric vehicle (EV) chargers, including 10,000 direct current fast chargers, by 2025. The order directed state agencies to update the ZEV Action Plan to expand private investment in ZEV infrastructure, particularly in low income and disadvantaged communities. The Legislature passed AB 2127 (Ting, Chapter 365, Statutes of 2018), which codified the executive order's ZEV goals and required the CEC to assess the EV charging infrastructure needed to support the levels of EV adoption required for the state to meet its goals. By enabling the CEC to focus the remaining DERF monies on research, development, and demonstration of ZEV fuels, infrastructure, and technologies, this bill is consistent with the state's ZEV transportation goals. This bill does not specify a specific ZEV fuel, infrastructure, or technology for which the funds may be used. As a result, it could be used for a variety of ZEV resources, including EV, fuel cell, and hydrogen infrastructure development.

Changes to vehicle inspection programs may decrease the likelihood of substantial future DERF funding. Pursuant to SB 210 (Leyva, Chapter 298, Statutes of 2019), the ARB is in the process of modifying existing heavy-duty diesel vehicle inspection processes to establish a HDVIMP. The ARB intends to tie vehicle registration to compliance certification with the hope that this linkage will increase compliance with heavy-duty vehicle emissions standards. To the extent that these changes increase compliance, penalties deposited into the DERF may decrease. Additionally, CEC's use of DERF monies is subject to legislative appropriation. As a result, this bill may largely enable the use of existing unspent funds in DERF and may not result in significant future funding for ZEV fuels, infrastructure, and

technologies. However, the CEC operates two programs that will continue to support ZEV research, development, and deployment. The CEC's Electric Program Investment Charge (EPIC) program will continue to provide research and development support for projects that fulfill California's climate goals, including ZEV projects. The CEC's Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP) will continue to fund the development and deployment of low- and zero-emission transportation fuels, infrastructure, and technologies.

Related/Prior Legislation

SB 210 (Leyva, Chapter 298, Statutes of 2019) required the ARB to develop and implement a HDVIMP for non-gasoline, heavy-duty, on-road trucks. The bill also required the Department of Motor Vehicles to confirm, prior to the initial registration, transfer of ownership, or renewal of registration, that a vehicle is compliant with or exempt from HDVIMP.

AB 2127 (Ting, Chapter 365, Statutes of 2018) required the CEC to assess the EV charging infrastructure needed to support the levels of EV adoption required for the state to meet its goals of putting at least five million ZEVs on the roads and reducing emissions of greenhouse gases to 40 percent below 1990 levels by 2030.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, a one-time cost pressure of \$4.6 million (special fund) since this bill would result in an increased likelihood or acceleration of spending that would otherwise not occur absent this bill.

SUPPORT: (Verified 6/18/20)

Ballard Power Systems (source)
California Electric Transportation Coalition
California Hydrogen Coalition
California Manufacturers & Technology Association
Ceres
Cruise
San Diego Gas and Electric
Southern California Gas Company

OPPOSITION: (Verified 6/18/20)

None received

ARGUMENTS IN SUPPORT: According to the author:

The Diesel Emission Reduction Fund was created to invest in the replacement of dirty, diesel-fueled vehicles with cleaner alternatives. This was a visionary concept when it was created through legislation (AB 1107) in 1989 and remains an extremely valuable one today. However, due to unforeseen advancements in technology, the apparent intent of the original author, Assemblywoman Gwen Moore, is not being carried out today. This bill seeks only to rectify that fact. Heavy-duty diesel emissions are the most dangerous for California's communities and should be attacked using every available dollar. In the Diesel Emission Reduction Fund, the State has a funding source capable of addressing this issue that has, for over 15 years, sat dormant while our communities continue to suffer from the public health hazard that diesel particulate matter pollution causes. Senate Bill 895 will allow the California Energy Commission to invest these dormant dollars in to innovative zero-emission fuels to clean up our air and improve life in our communities.

Prepared by: Sarah Smith / E., U., & C. / (916) 651-4107
6/19/20 16:41:07

**** END ****

THIRD READING

Bill No: SB 902
Author: Wiener (D), et al.
Amended: 5/21/20
Vote: 21

SENATE HOUSING COMMITTEE: 9-0, 5/26/20

AYES: Wiener, Caballero, Durazo, McGuire, Moorlach, Roth, Skinner, Umberg,
Wieckowski

NO VOTE RECORDED: Morrell, Bates

SENATE APPROPRIATIONS COMMITTEE: 6-1, 6/18/20

AYES: Portantino, Bradford, Hill, Jones, Leyva, Wieckowski

NOES: Bates

SUBJECT: Planning and zoning: housing development: density

SOURCE: California YIMBY
Habitat for Humanity California

DIGEST: This bill permits a local government to pass an ordinance to zone any parcel up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in a transit-rich area, a jobs-rich area, or an urban infill site, as specified.

ANALYSIS:

Existing law:

- 1) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.
- 2) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning

ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.

- 3) Exempts the adoption of an accessory dwelling unit (ADU) ordinance by a city or county from the California Environmental Quality Act (CEQA).

This bill:

- 1) Defines “transit rich area” as a parcel within one-half mile of a major transit stop or a parcel on a high quality bus corridor. Defines “high-quality bus corridor” as a corridor with a fixed-route bus service that meets specified service interval times.
- 2) Defines “jobs-rich area” as an area defined by the Department of Housing and Community Development (HCD), in consultation with the Office of Planning and Research (OPR) that is high opportunity and either jobs rich or would enable shorter commuter distances based upon whether, in a regional analysis, the tract meets both of the following:
 - a) The tract is high opportunity, meaning its characteristics are associated with positive educational and economic outcomes for households of all income levels.
 - b) The tract meets either of the following criteria:
 - i) New housing sited on the tract would enable residents to live near more jobs than is typical for tracts in the region.
 - ii) New housing sited in the tract would enable shorter commute distances for residents, relative to existing commute patterns for jobs-housing fit.
- 3) Requires HCD, beginning January 1, 2022, to publish and update, every five years thereafter a map showing “jobs-rich areas” as described in 2) above.
- 4) Defines “urban infill” site as a site that satisfies all of the following:
 - a) A site that is a legal parcel or parcels located in a city if, and only if, the city boundaries include some portion of either an urbanized area or urban cluster, or for unincorporated areas, a legal parcel or parcels wholly within the boundaries of an urbanized area or urban cluster.
 - b) A site in which at least 75% of the perimeter of the site adjoins parcels that are developed with urban uses.

- c) A site that is zoned for residential use or residential mixed-use development, or has a general plan designation that allows residential use or a mix of residential and nonresidential uses, with at least 2/3 of the square footage of the development designated for residential use.
- 5) Permits a local government to pass an ordinance, notwithstanding any local restrictions on zoning ordinances, to zone any parcel up to 10 units of residential density per parcel, at a height specified by the local government in the ordinance, if the parcel is located in one of the following:
- a) A transit-rich area.
 - b) A jobs-rich area.
 - c) An urban infill site.
- 6) Specifies that ordinances consistent with (5) above is not a project for purposes of CEQA.

Comments

- 1) *Author's Statement.* According to the author, "SB 902 is a thoughtful and balanced approach to California's housing crisis that provides cities with a powerful new streamlining tool, if they choose to take advantage of it, for increasing density in non-sprawl areas to as many as 10 housing units per parcel. By allowing rezoning to occur in a sensible and streamlined way, SB 902 will help ease California's housing crisis, spurred by a statewide shortage of 3.5 million homes and California ranking 49 out of 50 states in homes per capita. Given that cities face significantly increased housing production goals under the revised Regional Housing Needs Assessment and are required by the state Housing Element Law to complete rezonings to accommodate these goals, SB 902 is a timely and powerful new tool for cities to use in their comprehensive planning efforts."
- 2) *Housing needs and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. A community's general plan lays the foundation for all future land use decisions, as these decisions must be consistent with the plan. General plans are comprised of several elements that address various land use topics. Seven elements are mandated by state law: land use, circulation, housing, conservation, open-space, noise, and safety. Each community's general plan must include a housing element, which outlines a long-term plan for meeting

the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. Communities also identify regulatory barriers to housing development and propose strategies to address those barriers. State law requires cities and counties to update their housing elements every eight years.

- 3) *Zoning ordinances generally.* Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. A zoning ordinance may be subject to CEQA if it will have a significant impact upon the environment. The adoption of ADU ordinances, however, are explicitly exempt from CEQA. There are also some several statutory exemptions that provide limited environmental review for projects that are consistent with a previously adopted general plan, community plan, specific plan, or zoning ordinance.
- 4) *Denser Housing in Single-Family Zoning.* California's high — and rising — land costs necessitate dense housing construction for a project to be financially viable and for the housing to ultimately be affordable to lower-income households. Yet, recent trends in California show that new housing has not commensurately increased in density. In a 2016 analysis, the Legislative Analyst's Office (LAO) found that the housing density of a typical neighborhood in California's coastal metropolitan areas increased only by four percent during the 2000s. In addition, the pattern of development in California has changed in ways that limit new housing opportunities. A 2016 analysis by BuildZoom found that new development has shifted from moderate but widespread density to pockets of high-density housing near downtown cores surrounded by vast swaths of low-density single-family housing. Specifically, construction of moderately-dense housing (2 to 49 units) in California peaked in the 1960s and 1970s and has slowed in recent decades.

A 2019 Zillow report found that even modest densification, such as duplexes and fourplexes could result in millions more homes. Across 17 metro areas analyzed nationwide, allowing 10% of single-family lots to house two units instead of one could yield almost 3.3 million additional housing units to the existing housing stock. In the L.A. region, if one in five single-family lots were re-zoned to hold two homes, the local housing stock could be boosted by

775,000 homes. Allowing four homes instead of two on those same 20% of single-family lots could yield a housing stock increase of more than 2.3 million homes, or a 53.4% boost over the current stock when combined with homes already expected to be built.

- 5) *Housing near Transit.* Research has shown that encouraging more dense housing near transit serves not only as a means of increasing ridership of public transportation to reduce greenhouse gases (GHGs), but also a solution to our state's housing crisis. As part of California's overall strategy to combat climate change, the Legislature began the process of encouraging more transit oriented development with the passage of SB 375 (Steinberg, Chapter 728, Statutes of 2008). SB 375 is aimed at reducing the amount that people drive and associated GHGs by requiring the coordination of transportation, housing, and land use planning.

The McKinsey Report found that increasing housing demand around high-frequency public transit stations could build 1.2 – 3 million units within a half-mile radius of transit. The report notes that this new development would have to be sensitive to the community's character, and recommends that local communities proactively rezone station areas for higher residential density to pave the way for private investments, accelerate land-use approvals, and use bonds to finance station area infrastructure.

- 6) *Zoning not a project under CEQA.* In an effort to encourage denser housing, this bill authorizes a local government to pass an ordinance for the construction of housing up to 10 units in "transit-rich areas" (near transit), "jobs-rich areas" (high opportunity neighborhoods), and on infill sites. The local government may set the height requirements, and this ordinance would override any restrictive local zoning ordinances that limit the ability to adopt zoning ordinances. The ordinance authorized by this bill is not considered a project for purposes under CEQA. This provision is similar to the exemption authorized for the adoption of ADU ordinances. Current law requires ministerial approval of one ADU and one junior accessory dwelling unit (JADU) per lot that is within an existing structure, as specified; one detached ADU within a proposed or existing structure or the same footprint as the existing structure, along with one JADU, as specified; multiple ADUs within existing multifamily structures; or two detached ADUs on a multifamily lot, as specified.

The "jobs-rich" sites are intended to be similar to a mapping exercise that the California Tax Credit Allocation Committee in the State Treasurer's Office

underwent to encourage low-income housing developments in high opportunity areas, with the goal of encouraging more inclusive communities in California.

- 7) *Senate's 2020 Housing Production Package*. This bill has been included in the Senate's 2020 Housing Production Package. As such, the bill was amended to remove provisions related to by right approval of duplexes, triplexes, and fourplexes, as specified, as well as the addition of coauthors.
- 8) *Triple-referral*. This bill was triple referred to the Committees on Governance and Finance and Environmental Quality. Please see the Senate Housing Committee analysis for comments from those committees.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- HCD estimates total General Fund costs of \$462,000 in the first year, and \$329,000 annually thereafter as follows:
 - \$262,000 in the first year and \$249,000 annually thereafter for 1.25 PY of staff time to: produce guidance materials and provide technical assistance to local governments and developers; coordinate with the OPR and academic researchers to identify jobs-rich areas, perform IT services to publish maps; and update the jobs-rich data and mapping every five years.
 - \$200,000 in the first year and \$80,000 annually ongoing to contract with researchers to develop, host, and update the jobs-rich maps.
- Unknown, likely minor costs for OPR to coordinate with HCD to identify high opportunity areas that are either jobs-rich or enable shorter commute distances, as specified. (General Fund)

SUPPORT: (Verified 6/18/20)

California YIMBY (co-source)

Habitat for Humanity California (co-source)

350 Sacramento

All Home

American Planning Association, California Chapter

Bay Area Council

Bay Area Housing Action Coalition

California Apartment Association

California Building Industry Association

California Community Builders
Central City Association
Chan Zuckerberg Initiative
East Bay for Everyone
Facebook, INC.
Hollywood YIMBY
House Sacramento
League of Women Voters of California
Livable Sunnyvale
Monterey Peninsula Renters United
New Pointe Communities
Non-profit Housing Association of Northern California
North County YIMBY
Peninsula for Everyone
San Francisco Bay Area Planning and Urban Research Association
San Luis Obispo County YIMBY
Santa Cruz YIMBY
Schneider Electric
Silicon Valley At Home
Silicon Valley Community Foundation
South Bay YIMBY
TechEquity Collaborative
The Greenlining Institute
TMG Partners
Ventura County YIMBY
Westside Young Democrats
YIMBY Action
YIMBY Democrats of San Diego County
YIMBY Voice
1 individual

OPPOSITION: (Verified 6/18/20)

A Better Way Forward to House California
California State Association of Electrical Workers
California State Pipe Trades Council
California Teamsters Public Affairs Council
City of Dublin
City of Livermore
City of Newport Beach
City of Pleasanton

City of Redondo Beach
City of San Ramon
City of Thousand Oaks
International Union of Elevator Constructors, Local 8
International Union of Elevator Constructors, Local 18
Los Angeles County Division, League of California Cities
New Livable California Db a Livable California
Orange County Council of Governments
San Francisco Tenants Union
Sherman Oaks Homeowners Association
South Bay Cities Council of Governments
State Building and Construction Trades Council of CC
Sustainable Tamalmon te
Town of Danville
Town of Hillsborough
Western States Council Sheet Metal, Air, Rail and Transportation
19 Individuals

ARGUMENTS IN OPPOSITION: Some writing in opposition are opposed to removing community driven planning processes and stakeholder involvement. Some are opposed to upzoning single-family neighborhoods and are concerned about the lack of affordable housing requirements. Many writing in opposition to this bill are opposed to provisions that are proposed to be stricken from the bill. Several labor groups write in opposition to this bill and request worker protections and training standards that include both prevailing wage coverage and skilled and trained workforce requirements so that any unintended consequence that exploits the workforce that will build the housing under this bill is not created. They write that these two requirements provide middle-class wages and benefits to construction workers as well as also help put local construction workers and apprentices to work.

Prepared by: Alison Hughes / HOUSING / (916) 651-4124
6/19/20 16:41:07

**** END ****

THIRD READING

Bill No: SB 907
Author: Archuleta (D), et al.
Introduced: 2/3/20
Vote: 21

SENATE HUMAN SERVICES COMMITTEE: 7-0, 5/19/20
AYES: Hurtado, Jones, Beall, Jackson, Melendez, Pan, Wiener

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Child abuse or neglect investigation: military notification

SOURCE: Author

DIGEST: This bill allows a county child welfare department to develop and adopt a memoranda of understanding (MOU) with local military installations that govern the investigation of allegations of child abuse or neglect against active duty service members assigned to units on those installations. This bill also requires a county child welfare department investigating a case of child abuse or neglect to attempt to determine, as soon as practicable, if the parent or guardian is an active duty member of the Armed Forces of the United States.

ANALYSIS:

Existing law:

- 1) Establishes a state and local system of child welfare services, including foster care, for children who have been adjudged by the court to be at risk of abuse and neglect or to have been abused or neglected, as specified. (*WIC 202*)
- 2) Establishes a system of juvenile dependency for children for specified reasons, and designates that a child who meets certain criteria is within the jurisdiction of the juvenile court and may be adjudged as a dependent child of the court, as specified. (*WIC 300 et seq.*)

- 3) States that the purpose of foster care law is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, neglected or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of harm. *(WIC 300.2)*
- 4) Requires a social worker to conduct an investigation if the social worker has cause to believe that a child meets certain criteria, including, but not limited to, if a child has suffered or is at substantial risk of suffering serious physical harm, emotional damage, or sexual abuse, as specified. *(WIC 328)*
- 5) Requires a social worker to make a referral to child welfare services if they conduct an investigation and conclude that it is appropriate to offer child welfare services to the family. *(WIC 328)*
- 6) Establishes the Family Advocacy Program to address prevention of and response to child abuse and neglect involving military families. *(10 U.S.C. 1787)*
- 7) Requires Military Services to establish MOUs with state and local child welfare services to collaborate on the oversight of cases involving military families. *(DoD Directive 6400.1)*

This bill:

- 1) Requires a county child welfare department investigating a case of child abuse or neglect involving an allegation against the parent or guardian of the child to attempt, as soon as practicable, to determine if the parent or guardian is an active duty member of the Armed Forces of the United States.
- 2) Provides that a county child welfare department may develop and adopt a MOU with military installations located in whole or in part within the borders of its jurisdiction that govern the investigation of allegations of child abuse or neglect against active duty service members assigned to units on those installations.
- 3) Provides further that those memoranda may include, but are not limited to, all of the following:
 - a) To whom, how, and when each party would report information about an investigation;
 - b) Each party's role and responsibilities in an investigation; and

- c) The resources that are to be shared between the parties.

Comments

According to the author, SB 907 helps support military families by increasing their “access to prevention services and allowing better coordination of available child welfare and military preventative and rehabilitative services.” The author notes that an U.S. Department of Defense (DoD) study found an increased risk for interpersonal violence and family conflict among those suffering from depression, post-traumatic stress disorder, traumatic brain injury, and substance abuse as those conditions can “interfere with cognition, judgment, impulse control, and affect management.” Thus, the DoD requires the Commanding Officers of military bases to seek MOUs with state and local child welfare services to collaborate on the oversight of cases involving military families. (DoD 6400.1) The author believes such agreements, as provided for by SB 907, are “critical components of an overall approach to preventing and intervening in child maltreatment in military families.”

Child Welfare Services. California’s child welfare services (CWS) system is an essential component of the state’s safety net. Social workers in each county who receive reports of abuse or neglect, investigate and resolve those reports. When a case is substantiated, a family is either provided with services to ensure a child’s well-being and avoid court involvement, or a child is removed and placed into foster care. In 2019, the state’s child welfare agencies received 475,450 reports of abuse or neglect. Of these 475,450, 67,427 reports contained allegations that were substantiated and 28,407 children were removed from their homes and placed into foster care via the CWS system.

Abused and neglected children who have been removed from their homes fall under the jurisdiction of the county’s juvenile dependency court. The dependency court holds legal jurisdiction over the child, while the child is served by a CWS system social worker. This system seeks to ensure the safety and protection of these children, and where possible, preserve and strengthen families through visitation and family reunification. The CWS system provides multiple opportunities for the custody of a foster child, or the child’s placement outside of the home, to be evaluated, reviewed and determined by the judicial system, in consultation with the child’s social worker to help provide the best possible services to the child. It is the state’s goal to reunify a foster child or youth with their biological family whenever possible. In instances where reunification is not possible, it is the state’s goal to provide a permanent placement alternative, such as adoption or guardianship, with the second highest placement priority of the CWS

system being to unite children with other relatives or nonrelative extended family members.

As of October 1, 2019, there were 59,500 children in California's CWS system.

Family Advocacy Program (FAP). FAP is a DoD program created to prevent and respond to domestic violence, child abuse and neglect, and problematic sexual behavior in children and youth. FAP combines prevention, education, training, and the provision of services to military families by military services working in coordination with civilian agencies. FAP specifically works to prevent abuse, encourage early identification and prompt reporting, promote victim safety and empowerment, and provide appropriate treatment for affected service members and their families. Services are provided directly by FAP or coordinated through FAP to outside providers for families impacted by violence, abuse, and neglect.

Trained FAP victim advocates and clinicians offer a variety of services at every military installation where families are assigned. These services and programs include: workshops to build skills for healthy relationships; counseling and rehabilitation for services members, their spouses, or children; help in planning for safety in a crisis; support to new and expecting parents; a home visiting program for new parents; parenting classes; victim advocacy and support; among others. Additionally, FAP victim advocates and clinicians respond to reports of domestic abuse, child abuse and neglect, and problematic sexual behavior in children and youth.

When an incident of suspected abuse or neglect is reported to FAP, incidents that meet a reasonable suspicion of child abuse/neglect and domestic abuse are reviewed by an Incident Determination Committee, which is a multi-disciplinary team that includes FAP, hospital clinicians, law enforcement, CWS specialists, and command representatives. The Incident Determination Committee uses a standardized maltreatment definition, as defined by the DoD Manual Number 6400.01, Volume 3, to determine if the incident meets the clinical criteria for abuse. If the incident is determined by the Committee to meet the clinical criteria, a treatment plan is developed for the family.

At the national level, the Office of the Secretary of Defense Family Advocacy Program (OSD FAP) reports on child abuse and domestic abuse incident data. This data is collected and maintained within the FAP Central Registry, which was designed to capture reliable and consistent information on child abuse and neglect and domestic abuse incidents reported to FAP from each branch of the Military Services, through a comprehensive clinical case management system. According to OSD FAP's Report on Child Abuse and Neglect and Domestic Abuse, there were

12,849 reports of suspected child abuse and neglect to FAP in Fiscal Year (FY) 2017. Of these 6,450 were found to meet the clinical criteria of child abuse and neglect as determined by an Incident Determination Committee.

Child Welfare Information Sharing. In their final report, the Commission to Eliminate Child Abuse and Neglect Fatalities recommended that federal legislation be enacted defining the permissibility of data sharing for children who are dependents of an active duty military member and involved in the CWS. This report further recommended that this federal legislation require the sharing of information between civilian child protective services agencies and DoD FAP offices. In 2016, then President Obama signed into law Public Law 114, of which Section 575 dealt with the reporting of child abuse and neglect cases. As a result, reports of child abuse or neglect made to FAP offices must also be made to the appropriate CWS agency or agencies of the state in which the child resides. Thus, FAP offices are supposed to share the information they receive regarding allegations of child abuse or neglect with the appropriate state child welfare agencies.

The DoD additionally requires Military Services to establish MOUs with state and local child welfare offices to collaborate on the oversight of cases involving military families (DOD Directive 6400.1). These agreements encourage the sharing of information and collaboration on child welfare cases where a military dependent is involved from the state's child welfare agency with the Military Services' FAP. Some states have enacted state law to further encourage this collaboration, by either requiring or allowing state social services agencies to inform the appropriate FAP office when there is a case of alleged child abuse and neglect involving a military family. At this time, 24 states have enacted state laws either requiring or allowing the sharing of such information, and Missouri, Pennsylvania, and Vermont are currently considering legislation to that effect.

Related/Prior Legislation

AB 2869 (Chávez, 2016) would have required notification of the FAP in instances where a social worker is conducting a child welfare services investigation of a family in the Armed Forces. The bill was held in the Senate Human Services Committee.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, staff notes indeterminate cost pressures (General Fund) for potential state-local mandate costs. Identifying a parent or guardian's occupation is part of the existing county investigation process.

However, to the extent that a county would feel required to develop an MOU with a military installation, costs to counties may be above the funding levels provided under 2011 Realignment. If only county's workload costs to develop a MOU would be above \$50,000, it would qualify above the suspense threshold.

SUPPORT: (Verified 6/18/20)

American Legion, Department of California
AMVETS, Department of California
California Association of County Veterans Service Officers
California State Commanders Veterans Council
County Welfare Directors Association of California
Military Officers Association of America, California Council of Chapters
Military Services in California
Riverside Sheriffs' Association
San Diego Military Advisory Council
SEIU California
U.S. Department of Defense
Vietnam Veterans of America, California State Council

OPPOSITION: (Verified 6/18/20)

None received

Prepared by: Marisa Shea / HUMAN S. /
6/19/20 16:41:08

**** END ****

THIRD READING

Bill No: SB 914
Author: Portantino (D), et al.
Amended: 5/11/20
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 5-1, 5/20/20
AYES: Skinner, Bradford, Jackson, Mitchell, Wiener
NOES: Morrell
NO VOTE RECORDED: Moorlach

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wiecekowski
NOES: Bates, Jones

SUBJECT: Firearms

SOURCE: Author

DIGEST: This bill implements a procedure to confirm that a hunting license is valid when a person under the age of 21 years is using the license to purchase a firearm; and makes clarifying changes related to fees associated with firearm purchaser information.

ANALYSIS:

Existing law:

- 1) Prohibits the sale of firearms to any person who is under the age of 21 years. (Pen. Code, § 27510, subd. (a).)
- 2) Exempts persons aged 18-20 years from the prohibition on sale of firearms to persons under the age of 21 years when the person is purchasing a semiautomatic centerfire rifle if they possess a valid, unexpired hunting license issued by the Department of Fish and Wildlife. (Pen. Code, § 27510, subd. (b).)

- 3) Requires that persons who purchase a firearm in California must wait 10 days from the date of the purchase to undergo a background check and for the Department of Justice (DOJ) to process the purchase of the firearm. (Pen. Code, §§ 26815 & 27540.)
- 4) Allows DOJ to charge a fee sufficient to reimburse it for costs associated with the sale and transfer of firearms such as the preparation, sale, processing, and filing of forms or reports required for the submission of a Dealers' Record of Sale (DROS). (Pen. Code, § 28230 (a).)
- 5) Requires firearm purchaser information to be transmitted to the DOJ exclusively through electronic means. (Pen. Code, § 28205.)
- 6) Permits DOJ to electronically approve the purchase or transfer of ammunition through a vendor at the time of purchase or transfer and prior to the purchaser taking possession of the ammunition, and permits the department to collect certain fees for these purposes. (Pen. Code, § 30370.)
- 7) Directs the DOJ, starting July 1, 2025, to electronically approve the purchase or transfer of firearm precursor parts through a vendor at the time of purchase or transfer and before the purchaser taking possession of the firearm precursor part, and permits the department to collect certain fees for these purposes. (Pen. Code, § 30370.)

This bill:

- 1) Defines a valid and unexpired hunting license as a hunting license issued by the Department of Fish and Wildlife for which the time period authorized for the taking of birds or mammals has commenced but not expired.
- 2) Requires DOJ, for sales of firearms to persons under 21 years of age who are eligible to purchase a firearm based on their possession of a hunting license, confirm the validity of the hunting license as a part of the background check.
- 3) Removes a code section on DOJ's ability to impose fees for firearm purchaser information in Penal Code Sections 28230, 30370, and 30470, and also removes the relevant cross-references.

Comments

This bill seeks to define a valid hunting license as being valid only during the period in which the hunter may lawfully hunt the bird or mammal for which the

license has been granted. Hunting licenses may be used for persons aged 18-20 years to purchase semiautomatic centerfire rifle despite the ban on the purchase of these firearms by persons under the age of 21 years.

Under existing law, persons who purchase firearms in California must wait 10 days to undergo a background check and to allow the DOJ to process the purchase of the firearm. This bill imposes an additional requirement that the DOJ validate that the hunting license of a person aged 18-20 to purchase a semiautomatic centerfire rifle is valid, as defined by the bill. Only upon verification of validity would the exemption apply to allow the 18-20 year-old to purchase the specified rifle.

This bill also includes amendments to Penal Code Section 28230, originally proposed in AB 1009 (Gabriel, 2019). The purpose of amendment 3 in Section 8 is to update and modernize the sections of the Penal Code that relate to the DROS fee. The DROS fee is a fee DOJ is able to charge each time a person attempts to purchase a firearm. The original DROS fee was found in Penal Code Section 28225, and specifically stated 11 different items the fee was intended to cover. AB 1669 (Bonta, 2019) split the original DROS fee statute up into two separate code sections. This resulted in the single outdated fee found in Penal Code Section 28225, to become two separate fees found in 28225 and the newly created Penal Code 28233. As a result of this split, the language in 28230 stating “if the department charges a fee...it shall be charged in the same amount to all categories of transaction that are within that paragraph” is outdated and obsolete. It is no longer possible for the same fee under Section 28225 to be charged across all categories. This is because the fee as it reads, and was understood at the time Section 28230 was last amended, no longer exists.

In Amendment 5, the new Section 10, includes amendments to Penal Code Section 30370. This Penal Code section, along with Section 30356, was created as a part of Proposition 63 (2016) and SB 1235 (De Leon, 2016). Penal Code Section 30356 allows the department to recover the reasonable cost of regulatory and enforcement activities related to this article by charging ammunition purchasers and transferees a per transaction fee not to exceed one dollar (\$1). Section 30370 allows the department to charge a separate fee, applicable to purchasers who do not otherwise qualify for Section 30356, a one dollar "quick check." Penal Code Section 30370 originally included a cross reference to Section 28225, however due to Section 28225 no longer existing, the purpose of the amendment is to reflect the changes in statute that have since been made.

There are also amendments to Penal Code Section 30470 proposed in this bill. This issue is almost exactly the same issue mentioned above, except that it applies to firearm precursor parts instead of ammunition. Penal Code Section 30470 was created by AB 879 (Gipson, 2019). Section 30470(e) allows the department to recover the reasonable cost of regulatory and enforcement activities related to this article by charging firearm precursor parts purchasers and transferees a per transaction fee not to exceed one dollar (\$1). This section also includes the same outdated reference to Penal Code Section 28225 as the aforementioned Penal Code sections. For those individuals who are not eligible for a one dollar quick check, section (e) establishes an alternative fee for would be purchasers of precursor parts. Similarly, because Section 28225 as it existed at the time of AB 879's passage was also being amended but did not encompass all requisite cross references, the proposed amendments to 30470(e) reflect the changes in statute that have been made.

In conclusion, due to AB 1669 splitting Penal Code Section 28225, Penal Code Sections 28230, 30370, and 30470 all need to be updated to reflect the changes and reference relevant cross-references.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- Department of Justice (DOJ): The department reports costs and personnel requirements to implement this bill as follows:

	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Ongoing
Personnel	\$ 1,690,000	\$ 3,647,000	\$ 1,778,000	\$ 589,000	\$ 452,000
OE&E^	\$ 997,000	\$ 1,834,000	\$ 1,074,000	\$ 199,000	\$ 140,000
Total	\$ 2,687,000	\$ 5,481,000	\$ 2,852,000	\$ 788,000	\$ 592,000
Positions	32.0	45.0	18.0	5.0	3.0

^Operating expenses and equipment

Fund Source:	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	Ongoing
General Fund	\$ 208,000	\$ 362,000	\$ 362,000	\$ 196,000	-
Special Fund*	\$ 2,479,000	\$ 5,119,000	\$ 2,490,000	\$ 592,000	\$ 592,000
Total	\$ 2,687,000	\$ 5,481,000	\$ 2,852,000	\$ 788,000	\$ 592,000

- Department of Fish and Wildlife: Implementation costs of approximately \$50,000 to design, build, test, and deploy a software program that electronically interacts with DOJ about hunting license information. (General Fund)

* DROS Special Account—structurally imbalanced

SUPPORT: (Verified 6/18/20)

None received

OPPOSITION: (Verified 6/18/20)

National Rifle Association

ARGUMENTS IN OPPOSITION: According to the National Rifle Association, “SB 914 makes a number of changes to existing law that ultimately will have no impact on violent crime and will simply make it more difficult for law-abiding adults to protect themselves and their loved ones by exercising their Second Amendment rights.

“California law was recently changed to prohibit the purchase of long guns by individuals under 21 unless they possess a hunting license. While the NRA firmly opposed the restriction on law-abiding adults, this bill only compounds the problem by stating that the license even though unexpired, may not satisfy the requirement because it has yet to become valid. A hunting license in the state of California is valid from July 1-June 30. Under this proposal an adult under the age of 21 who purchases a hunting license for the upcoming season and would like to purchase a rifle or shotgun, would be precluded from using this license until the hunting season commences, or be forced to buy an additional license for a season that is all but over. The validity of a hunting license has nothing to do with the underlying educational component, which only needs to be completed once during a hunter's lifetime. This restriction only serves as a burden and tax on our rights.

“Multiple sections of California law dictate the transfer/loan of firearms to minors with some discrepancies. SB 914 attempts to make conforming changes by adopting the most limited of the available exceptions. The NRA encourages the author to consider a broader approach by conforming state code to the current loan provisions provided for in Sec. 27505 as opposed to those in Sec. 31810.

“SB 914 also raises the cost of eligibility checks on certain ammunition purchases and precursor firearms parts. In 2019, AB 1669 was signed into law, raising the

DROS fees for firearms checks. This was done by reducing the DROS fee from \$19 to \$1 and subsequently creating a new sub-account for firearm purchases that will be passed through to the purchaser, amounting to a 'new' fee of \$31.19. The DROS fee is directly tied to basic eligibility checks for ammunition. Commencing January 1st of this year, the California Department of Justice may charge no more than \$1, however, the DOJ has continued to charge \$19 contrary to existing law. This legislation will point to the now amended statutory language and allow the Department of Justice to charge the fee as it was on December 31, 2019, amounting to an absurd statutory drafting scheme. This bill will not only change the costs for basic eligibility checks on ammunition, but also precursor firearms parts when that statute becomes effective, costing law-abiding Californian's more money to exercise their constitutional rights."

Prepared by: Nikki Scott / PUB. S. /
6/19/20 16:41:09

****** END ******

THIRD READING

Bill No: SB 921
Author: Dahle (R) and Dahle (R)
Introduced: 2/4/20
Vote: 21

SENATE TRANSPORTATION COMMITTEE: 13-0, 5/29/20
AYES: Beall, Allen, Dahle, Dodd, Galgiani, Lena Gonzalez, Grove, McGuire,
Melendez, Morrell, Roth, Rubio, Wieckowski
NO VOTE RECORDED: Skinner, Umberg

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: State highways: Route 174: relinquishment

SOURCE: Author

DIGEST: This bill authorizes the California Transportation Commission to relinquish to the City of Grass Valley the portion of Route 174 within its city limits if the Department of Transportation and the city enter into an agreement.

ANALYSIS:

Existing law:

- 1) Identifies the California state highway system through a description of segments of the state's regional and interregional roads that are owned and operated by the Department of Transportation (Caltrans).
- 2) Defines a "state highway" as any roadway that is acquired, laid out, constructed, improved, or maintained as a state highway according to legislative authorization.
- 3) Specifies that it is the intent of the Legislature for the routes of the state highway system to connect the communities and regions of the state and that

they serve the state's economy by connecting centers of commerce, industry, agriculture, mineral wealth, and recreation.

- 4) Provides that any expansion or deletion of the state highway system occurs through a statutory process requiring the California Transportation Commission (CTC) to make findings that it is in the best interest of the state to include or delete a specified portion of roadway from the system.

This bill:

- 1) Authorizes the CTC to relinquish to the City of Grass Valley the portion of Route 174 within its city limits if the Caltrans and the city enter into an agreement.
- 2) Provides, on and after the effective date of the relinquishment, 1) the relinquished portion of Route 174 ceases to be a state highway, and 2) the City of Grass Valley must ensure the continuity of traffic flow and maintain signs directing motorists to the continuation of Route 174.

Comments

- 1) *Purpose.* The purpose of this bill is to turn over responsibility for the portion of State Route 174 within the City of Grass Valley to the city, relieving Caltrans from that responsibility. The author notes that the city has worked with Caltrans on this proposal and believes that relinquishment to the city is a simple way to ensure the roadway is properly maintained.
- 2) *Relinquishments.* Each session, the Legislature passes and the governor signs numerous bills authorizing CTC to relinquish segments of the state highway system to local jurisdictions. Relinquishment transactions are generally preceded by a negotiation of terms and conditions between the local jurisdiction and Caltrans. Once an agreement has been established, CTC typically approves the relinquishment and verifies its approval via a resolution.
- 3) *Description.* This portion of Route 174 is a two-lane road with sidewalks and bicycle lanes, which goes through downtown Grass Valley.
- 4) *Funding Pending.* Caltrans has a \$2.8 million road upgrade project scheduled for the end of 2021 for the portion of State Route 174 that is covered by this

bill. If this bill becomes law, this funding could be transferred to the City of Grass Valley to achieve those same purposes.

- 5) *Support.* Writing in support, the City of Grass Valley notes that relinquishment will help it better maintain the underground utilities in the area. It would also allow the city to configure the roadway to better support parking and walkability in their downtown area.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, unknown one-time Caltrans costs ranging from minor to potentially over \$1 million prior to the relinquishment of the designated segment of SR 174 to the City of Grass Valley (State Highway Account). These costs would be offset in future years due to avoided maintenance costs on the relinquished segment.

SUPPORT: (Verified 6/19/20)

City of Grass Valley

OPPOSITION: (Verified 6/19/20)

None received

Prepared by: Randy Chinn / TRANS. / (916) 651-4121
6/19/20 16:55:27

**** END ****

THIRD READING

Bill No: SB 940
Author: Beall (D), et al.
Amended: 4/17/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 6-0, 5/11/20
AYES: McGuire, Beall, Hertzberg, Hurtado, Nielsen, Wiener
NO VOTE RECORDED: Moorlach

SUBJECT: Housing Crisis Act of 2019: City of San Jose

SOURCE: City of San Jose
Santa Clara Valley Open Space Authority

DIGEST: This bill grants the City of San Jose flexibility in meeting the no net loss in residential capacity requirements of SB 330 (Skinner Chapter 654, Statutes of 2019).

ANALYSIS:

Existing law:

- 1) Allows, under the California Constitution:
 - a) Cities and counties to “make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws.”
 - b) Cities that adopt charters to control their own “municipal affairs.” In all other matters, charter cities must follow the general, statewide laws.
- 2) Requires every county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan. A general plan must include specified mandatory “elements,” including a housing element that establishes the locations and densities of housing, and a land use element that describes the

general categories of uses (such as multifamily residential, single family residential, retail commercial, and open space) that are allowed in specific portions of a jurisdiction.

- 3) Requires cities' and counties' major land use decisions—including zoning ordinances and other aspects of development permitting—to be consistent with their general plans.
- 4) Requires a local government's housing element to allow for enough housing to be produced to meet the jurisdiction's regional housing need allocation (RHNA), which is updated on a statutory schedule (generally every eight years). The Department of Housing and Community Development (HCD) reviews and certifies housing elements as compliant with state law, and also reviews their zoning ordinances for consistency with the approved housing element.
- 5) Provides, pursuant to the Housing Crisis Act of 2019 (SB 330):
 - a) Prohibits, until January 1, 2025, most local governments from changing local planning rules to reduce residential capacity within the jurisdiction or otherwise change land uses to a less intensive use that would reduce residential capacity.
 - b) Allows cities and counties to reduce residential development intensity ("downzone") in one part of their jurisdiction as long as they increase residential intensity ("upzone") commensurately in another part of the jurisdiction at the same time, so that there is no net loss in residential capacity.

This bill:

- 1) Allows the City of San Jose, for the purposes of complying with the no net loss requirement in SB 330, to first increase the residential capacity in one area of the city and count that upzoning towards a later downzoning of an eligible parcel.
- 2) Applies this bill's provisions only to parcels zoned for residential uses that are inconsistent with the general plan of the city in effect on January 1, 2020. The downzoning authorized by SB 940 must occur within one year of the increase in zoned capacity takes place.

- 3) Provides that any downzonings only take effect once the City of San Jose establishes zoning districts that implement mixed use neighborhood, urban residential, transit residential, and urban village general plan land use designations.
- 4) Requires the city of San Jose to report each downzoning in the annual progress report that the city must file with HCD and to submit the annual report to the relevant policy committees of the Legislature in every year that the City of San Jose amends a zoning ordinance pursuant to this bill.
- 5) Sunsets this bill once HCD certifies the city's housing element for the sixth cycle.
- 6) Includes findings and declarations to support its purposes.

Background

The City of San Jose is a charter city. The city's current general plan, Envision 2040, proposes 29 types of land uses within the city's boundaries, including designations for urban villages that are intended to accommodate higher density housing and significant job growth, mixed use neighborhood, urban residential, transit residential that is intended to put mixed-use development near transit stations at moderately high density, urban residential that allows for medium density development and some commercial uses, and mixed use neighborhood that is intended for individual neighborhoods of denser single family homes or townhomes. The city has not yet adopted all the conforming zoning ordinances for these designations.

San Jose has relied on maintaining inconsistency between their general plan and zoning to ensure that development was concentrated in its urban core, rather than in its undeveloped outlying areas. Since the general plan designation overrides the zoning designation, the amount of housing that can be legally built on these parcels is negligible. Prior to 2019, state law didn't require zoning ordinances for charter cities to be consistent with their general plans. SB 1333 (Wieckowski, Chapter 856, Statutes of 2018) extended the consistency requirement, as well as several other provisions of planning and zoning law, to charter cities. However, in order to meet SB 1333's requirements, the city must downzone these parcels to less intensive uses. SB 330 prohibits downzoning unless a city simultaneously upzones to avoid any loss in residential capacity.

Because San Jose is embarking on a more comprehensive effort to bring zoning for many parcels into consistency with its general plan, it argues that it is infeasible to downzone and upzone all the parcels that it needs to modify for consistency simultaneously, as SB 330 requires. The city and the Santa Clara Valley Open Space Authority want the Legislature to grant the City of San Jose flexibility on when upzonings and downzonings can occur under SB 330.

Comments

- 1) *Purpose of the bill.* According to the author, “Senate Bill 940 empowers the City of San Jose to protect green and open space while maintaining a commitment to increase capacity for housing developments. This bill is urgently needed because the City of San Jose is currently in the process of rezoning over 11,000 acres of open space that is currently incorrectly zoned for single-family homes. Without SB 940, the city will have to navigate a burdensome rezoning process that will make it difficult to meet the deadlines required in recently passed legislation. This bill will authorize the City of San Jose to up-zone infill housing sites proactively in the urban core and around transit, while also having the flexibility to strategically down-zone sites to prevent sprawl. In other words, San Jose will aggressively up-zone in the urban core, then use their down-zone capacity to appropriate re-zone and protect our open spaces. I want to make it clear that this bill will not decrease the City’s housing capacity.”
- 2) *Who’s next?* SB 1333 required all charter cities to bring their zoning ordinances into conformity with their general plans. While some charter cities required consistency between their general plans and zoning ordinances prior to SB 1333, others did not. Accordingly, it seems likely that other cities will come forward with reasons of their own for relaxing provisions of SB 330, whether because of SB 1333’s consistency requirement or other implementation issues that arise. SB 940 sets a precedent for easing compliance with SB 330, which could be used by those cities who are less well-intentioned. However, SB 940 also included several provisions that ensure that it will be used in a manner that truly preserves residential capacity within the jurisdiction, such as a sunset, reporting requirements, and triggers on when the downzonings authorized by the bill become effective. Other city-by-city measures to loosen requirements set by SB 330 should ensure that they are similarly consistent with the spirit of the law.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/14/20)

City of San Jose (co-source)

Santa Clara Valley Open Space Authority (co-source)

Building Industry Association of the Bay Area

California Building Industry Association

Green Foothills

Santa Clara Valley Audubon Society

OPPOSITION: (Verified 5/14/20)

None received

Prepared by: Anton Favorini-Csorba / GOV. & F. / (916) 651-4119

5/15/20 8:59:28

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THIRD READING

Bill No: SB 952
Author: Nielsen (R)
Amended: 5/29/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 6-0, 5/28/20
AYES: McGuire, Moorlach, Beall, Hurtado, Nielsen, Wiener
NO VOTE RECORDED: Hertzberg

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Sales and use taxes: exemption: backup electrical generators:
deenergization events

SOURCE: Author

DIGEST: This bill exempts from the state and local sales and use tax specified backup electrical generators used by local jurisdictions during deenergization events.

ANALYSIS:

Existing law:

- 1) Imposes the sales tax on every retailer “engaged in business in this state” that sells tangible personal property, and requires them to register with the California Department of Tax and Fee Administration (CDTFA), as well as collect and remit appropriate tax at purchase and remit the amount to CDTFA.
- 2) Applies the sales tax whenever a retail sale occurs, which is generally any sale other than one for resale in the regular course of business.
- 3) Provides that unless the purchaser pays the sales tax to the retailer, he or she is liable for the use tax, which the law imposes on any person consuming tangible

personal property in the state, and requires the purchaser to remit use tax to CDTFA.

- 4) Sets the state sales and use tax rate at 7.25% of the sales price of the property sold or used, of which 3.9375% flows to the state General Fund.
- 5) Allows cities, counties, and specified special districts to increase the sales and use tax, also known as district or transactions and use taxes, up to a 2% countywide cap, with some exceptions.
- 6) Exempts some items from the state and local sales and use tax (prescription drugs, food, poultry litter), while others are exempt from the state sales tax, but not the local share, such as farm equipment and machinery, diesel fuel used for farming and food processing, and racehorse breeding stock, among others.

This bill:

- 1) Enacts a (7.25%) sales and use tax exemption for backup electrical generators when purchased by a city, county, city and county, special district, or other political subdivision during deenergization events.
- 2) Defines “backup electrical generators” as a standby or portable device that meets all of the following requirements:
 - a) The device can generate at least 20 kilowatts.
 - b) The device is designed and manufactured exclusively for the generation of electricity.
 - c) The device meets and complies with the State Air Resources Board’s air quality standards for use in California.
- 3) Defines “deenergization events” as a proactive interruption of electrical service for the purpose of mitigating or avoiding the risk of causing a wildfire.
- 4) Requires that the backup electrical generator is used exclusively to power critical facilities, as defined, by the city, county, city and county, special district, or other political subdivision during a deenergization event and requires the purchaser of the product to provide the seller a written statement providing that the purchaser purchased the emergency backup generator for use exclusively in powering a critical facility during a deenergization event.
- 5) Commences for purchases made on and after January 1, 2021, and ends on January 1, 2026.

- 6) Includes provisions indicating legislative intent to apply the requirements of Revenue and Taxation Code Section 41.
- 7) Requires the Legislative Analyst's Office (LAO) to collaborate with the CDTFA to review and submit a report to the Legislature regarding the effectiveness of the benefit annually.

Background

Since the investor-owned utilities have been found responsible for many wildfires, they have taken extra precautions by implementing Public Safety Power Shutoffs (PSPS) in certain regions. A PSPS, also referred to as deenergization, is a last resort preventative measure designed to reduce the risk of utility infrastructure starting wildfires when the electric utility turns off power to distribution lines. No single factor drives a PSPS; instead, each electric utility reviews a combination of criteria when determining if power should be turned off.

Power loss negatively affects communities, with especially serious consequences for vulnerable populations that rely on medical devices powered by electricity and important emergency and public services such as fire departments and water agencies. To prepare for such disruptions, some businesses and community members purchase portable or backup electric generators, which are propane, solar, or diesel-powered devices that provides temporary electrical power.

Backup generators are often subject to air district and state requirements, which vary among California's 35 air districts and the California Air Resource Board (CARB). CARB allows Californians to register their backup generator with the Portable Equipment Registration Program, a voluntary statewide program, in lieu of obtaining an air district permit. Any machine, including portable generators that utilize internal combustion engines must be certified as "CARB compliant" before sold or used in California meaning that it complies with the air pollution standards set. Such generators run cleaner than non-CARB compliant generators. However, CARB compliant generators still emit pollutants. Following PSPS events last year, CARB determined that PSPS are emergency events, thus allowing Californians to utilize unpermitted and/or unregistered backup generators during a PSPS so long as certain conditions are met.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the CDTFA estimates that this bill will result in a one-time General Fund revenue loss of \$499,000. CDTFA would incur minor and absorbable administrative costs.

SUPPORT: (Verified 6/19/20)

California Municipal Utilities Association
Rural County Representatives of California
San Diego County Water Authority
Santa Clara Valley Water District

OPPOSITION: (Verified 6/19/20)

None received

Prepared by: Gustavo Medrano / GOV. & F. / (916) 651-4119
6/19/20 16:55:28

****** END ******

THIRD READING

Bill No: SB 956
Author: Jackson (D)
Introduced: 2/10/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 4-1, 5/21/20
AYES: McGuire, Beall, Hertzberg, Wiener
NOES: Nielsen
NO VOTE RECORDED: Moorlach, Hurtado

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Taxation: tax expenditures: California Tax Expenditure Review Board

SOURCE: California Tax Reform Association
California Teachers Association

DIGEST: This bill establishes the California Tax Expenditure Review Board (Board) to determine the schedule for comprehensive assessments of major tax expenditures programs to be conducted by a University of California (UC) research center.

ANALYSIS:

Existing law:

- 1) Allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives to either compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving.

- 2) Requires the Department of Finance (DOF) to annually publish a list of tax expenditures, currently totaling around \$72.8 billion per year.
- 3) Defines a tax expenditure as “a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state.”
- 4) Enacts several tax expenditures which contain sunset dates, which set a specific date before which a taxpayer can claim a tax benefit for performing the activity that qualifies for the tax benefit in a certain taxable or calendar year.
- 5) Directs the Legislative Analyst’s Office (LAO) to analyze specific aspects of new or extended tax expenditure programs, and report to the Legislature, usually one year before its sunset date, such as the Motion Picture Production Credit and the California Competes Tax Credit, among others.
- 6) Enacts several expenditures that do not have sunset dates, some of which are based on the Internal Revenue Code.
- 7) Requires any bill introduced on or after January 1, 2015, that allows a new income tax credit to contain specific goals, purposes, and objectives that the tax credit will achieve (SB 1335, Leno, Chapter 845, Statutes of 2014). The bill must also contain detailed performance indicators for the Legislature to use when measuring whether the tax credit meets its goals, purposes, and objectives. Last year, the Legislature expanded this requirement to apply to all income tax expenditures under the Personal Income and Corporation Taxes, and exemptions under the Sales and Use Tax (AB 263, Burke, Chapter 743, Statutes of 2019).

This bill:

- 1) Establishes the Board as an independent advisory body to comprehensively assess major tax expenditures and make recommendations to the Legislature, consisting of five members:
 - a) The State Controller, or the Controller’s designee, as Chair;
 - b) The Legislative Analyst, or the Legislative Analyst’s designee;
 - c) The California State Auditor, or the California State Auditor’s designee;
 - d) The Director of DOF, or the Director of DOF’s designee; and

- e) An individual designated by the Secretary of Government Operations who possesses expertise regarding tax administration and tax expenditures by the California Department of Tax and Fee Administration (CDTFA) and the Franchise Tax Board (FTB).
- 2) States that members of the Board serve without compensation, but would be reimbursed for necessary traveling and other expenses incurred in performing their duties and responsibilities.
 - 3) Permits the Board to create advisory committees that include members of the public.
 - 4) Directs the Board and any advisory committees it establishes to keep official records of all of their proceedings.
 - 5) Requires the Board to meet at locations easily accessible to the public in accordance with the Bagley-Keene Open Meeting Act.
 - 6) Requests the Regents of the UC through a new or existing research center to conduct comprehensive assessments of major tax expenditures, as defined.
 - 7) Provides that this bill applies to UC only to the extent that the Regents enact a resolution.
 - 8) Requires the Board to determine the scope of each comprehensive assessment, which must include, but is not limited to:
 - a) A description of the legislative intent for each tax expenditure, if the act adding or amending the expenditure contains legislative findings and declarations of that intent or that legislative intent is otherwise expressed or specified by that act.
 - b) A brief description of the beneficiaries of the tax expenditure as provided by state law.
 - c) The number of returns filed or business entities affected, as applicable, for the most recent tax year for which full year data is available.
 - d) A listing of any comparable federal tax benefit, if any.
 - e) A description of any recent prior tax expenditure evaluation or compilation of information completed by any state agency.

- f) The economic, social, environmental, or any other impact of the tax expenditure to the State using metrics UC deems appropriate.
 - g) Total General Fund dollars lost due to the tax expenditure,
 - h) Options for modifying the tax expenditure to improve its effectiveness or reduce cost to the General Fund.
- 9) Directs FTB and CDTFA to ensure relevant taxpayer data is made available to UC with appropriate levels of data security and protections.
- 10) States that the center must present its comprehensive, peer-reviewed assessment of major tax expenditures to the Board at a public meeting by July 1, 2022.
- 11) Provides that the Board must post the assessments it receives on its internet site within five business days.
- 12) States that after the comprehensive assessment has been posted on the Board's internet website for at least 14 days, and no later than two months from the date the board posts the comprehensive assessment on its internet website, the Board must meet in public for the purposes of voting to make a recommendation to the Legislature regarding the major tax expenditure. Before making a recommendation, the Board must consider input from the public regarding the comprehensive assessment.
- 13) Provides that the votes of three members is necessary to make a recommendation.
- 14) States that any recommendation shall be subject to enactment by the Legislature, and that nothing in the measure shall be construed to preclude the Legislature from taking action independently to amend, sunset, or repeal existing tax expenditures.
- 15) Requires any recommendation to include:
- a) The extent to which the major tax expenditure is a cost-effective use of resources compared to other options to address the same purpose, intent, or goal.
 - b) The major tax expenditure's effect on the state's General Fund.
 - c) The major tax expenditure's economic, social, environmental, or any other impact.

- d) Preferred options for modifying the tax expenditure to improve its effectiveness or to reduce its costs to the General Fund, if these options are identified.
- 16) Directs the Board to provide a report to the Legislature, as specified, that compiles all of its recommendations regarding major tax expenditures, including any recommendation the Board failed to make for a major tax expenditure in which UC completed a comprehensive assessment, and the reasons for the failure, by January 1, 2023.
 - 17) Requires the Senate Committee on Governance and Finance and the Assembly Committee on Revenue and Taxation to hold a joint public hearing on the report by August 15 of the second year of the legislative session when the report is received.
 - 18) Sunsets its provisions six months after the joint hearing.
 - 19) Defines “major tax expenditure” as one that meets all of the following criteria:
 - a) Does not have a repeal or inoperative date.
 - b) Does not include metrics of efficacy reported as a requirement.
 - c) For which the annual cost to the state has met or exceed \$1 billion over the past 10 years.
 - d) Is not one that is specifically excluded by thIS bill.
 - 20) Makes legislative findings and declarations supporting its purposes.

Background

In addition to the DOF’s annual tax expenditure report, FTB produces an annual report, CDFTA issues Publication 61 which details all sales and use tax exemptions, and the LAO often analyzes tax expenditures which usually includes recommendations, in addition to the State Auditor, among others. SB 956 establishes a new board within state government charged with evaluating roughly 10 tax expenditures, some of which have been studied, like the research and development credit while others have not, like the water’s edge election. As a result, this bill creates an independent and autonomous board that would assess some tax expenditures for which little neutral assessment exists. Last year, the Governor vetoed an almost identical bill, SB 468 (Jackson):

I am returning Senate Bill 468 without my signature.

The bill creates the California Tax Expenditure Review Board to comprehensively assess specified major tax expenditures and make recommendations to the Legislature.

I support greater transparency with respect to tax credits, exemptions, and other expenditures and believe these items should be scrutinized periodically to justify their overall cost to the state's revenue base. However, creating a new board to accomplish that goal is unnecessary. The Department of Finance is currently required to publish tax expenditure reports and existing law requires new income tax expenditures to specify goals, performance indicators, and data collection requirements.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the UC indicates that it would incur a one-time General Fund cost of \$200,000 to conduct the comprehensive assessment. This bill also could potentially result in increased administrative costs to the FTB and the CDTFA to provide relevant data and information to UC. Any such costs have yet to be identified.

SUPPORT: (Verified 6/19/20)

California Tax Reform Association (co-source)

California Teachers Association (co-source)

American Civil Liberties Union of Northern California/Southern

California/Imperial and San Diego Counties

Association of California School Administrators

California Association of School Business Officials

California County Superintendents Association

California Federation of Teachers

California Professional Firefighters

California Retired Teachers Association

California School Boards Association

California School Employees Association

California State PTA

Coalition for Adequate School Housing

Community College Association

Community College League of California

Los Angeles Community College District

Los Angeles Unified School District

Mt. San Antonio College

SEIU California

UDW-AFSCME Local 3930

OPPOSITION: (Verified 6/19/20)

Advanced Medical Technology Association
African American Farmers of California
Airlines for America
American Pistachio Growers
Association of California Life and Health Insurance Companies
Bay Area Council
Biocom
Building Owners and Managers Association of California
California Agricultural Aircraft Association
California Bankers Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Forestry Association
California Hotel & Lodging Association
California Independent Petroleum Association
California League of Food Producers
California Life Sciences Association
California Manufacturers and Technology Association
California Railroads
California Taxpayers Association
California Trucking Association
Camarillo Chamber of Commerce
Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
CompTIA
Contra Costa Taxpayers Association
Council on State Taxation
Family Business Association of California
Far West Equipment Dealers Association
International Council of Shopping Centers
Kern County Taxpayers Association
Maersk Inc.
NAIOP of California, the Commercial Real Estate Development Association
National Federation of Independent Business
Nisei Farmers League

North Orange County Chamber of Commerce
Orange County Business Council
Orange County Taxpayers Association
Oxnard Chamber of Commerce
Plant California Alliance
Qualcomm, Inc.
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Solano County Taxpayers Association
Southwest California Legislative Council
Sutter County Taxpayers Association
TechNet
Valley Industry and Commerce Association
West Coast Lumber & Building Material Association
Western Agricultural Processors Association
Western Growers Association
Western Manufactured Housing Communities Association
Western Plant Health Association
Western States Petroleum Association
Wine Institute

ARGUMENTS IN SUPPORT: According to the author, “California has nearly 80 tax expenditures. These are provisions in the tax code – including tax credits, tax deductions, sales tax exemptions and income exclusions – that reduce the amount of tax collected in exchange for an intended public policy objective. Many tax expenditures were created decades ago to achieve certain goals and economic benefits such as improving industry competitiveness, influencing taxpayer behavior or spurring economic growth, and have sat on the books for decades without any scrutiny, oversight, or even the necessary data to demonstrate results. These tax expenditures carry significant costs to the state of California in the same manner as spending programs. They impact the General Fund as well as Proposition 98, the minimum annual funding level for K-12 schools and community colleges. The Department of Finance indicates that by 2020-21, there will be a \$506.4 billion loss in revenue to the General Fund since 2008 from tax expenditures. Every dollar of a tax credit that does not generate its cost in new revenue takes approximately 40 cents out of California's classrooms and additionally affects the amount of funding available for critical public services. Despite their impact on the state's economy, there is no overall mechanism for the review of these expenditures. As the Assembly Revenue and [Taxation] Committee has pointed out, this can result ‘in tax expenditures remaining a part of

the tax code without demonstrating any public benefit.’ In a 2017 report, ‘How States Are Improving Tax Incentives for Jobs and Growth,’ the PEW Charitable Trusts rated California as ‘trailing’ 28 other states in evaluating tax incentives for their effectiveness and benefit to the state. SB 956 will begin the process of examining California's tax expenditures to evaluate whether they are achieving their goals. This bill chooses among the largest of the tax credits and sales tax exemptions that have no metrics of efficacy associated with them, no sunset provision, and result in reductions of tax receipts of greater than \$10 billion over 10 years. The bill creates a nonpartisan Tax Expenditure Review Board, comprised of the State Controller, the Legislative Analyst, the State Auditor, the Director of Finance or their designee, and a designee of the Secretary of the Government Operations agency. In public meetings, the board is required to create a schedule for the Legislative Analyst's Office to analyze each tax expenditure for its effectiveness. After the LAO's analyses are complete and made publicly available the board will hold public hearings to solicit input from stakeholders regarding the LAO report. Finally, the board will vote to make a recommendation to the Legislature regarding whether to maintain, alter or repeal the tax expenditure. The bill also requires a joint public legislative hearing on the LAO report. This bill is intended to be the beginning of a process whereby California examines all of its tax expenditures to [ensure] they are achieving their public policy objectives and making best use of limited public dollars. SB 956 will bring transparency and accountability to California's tax incentive process by creating a mechanism for review of some of California's most costly tax expenditures. This will allow the Legislature, prior to deciding whether to renew them, to determine if they are cost-effective, properly designed and effecting their intended public policy objectives.”

ARGUMENTS IN OPPOSITION: According to the California Taxpayers Association and others, “We are concerned that SB 956 would create an unnecessary new bureaucracy in state government to report findings related to ‘tax expenditures’ based on subjective evaluation metrics that could prejudice the outcomes and recommendations submitted to the Legislature. The creation of a new state body to act as an interpretive intermediary to communicate report findings to the Legislature is unnecessary and duplicative of functions currently performed by the Department of Finance (DOF), the Legislative Analyst’s Office, the State Auditor, the Franchise Tax Board, the California Department of Tax and Fee Administration and others. Reports and findings commissioned by the Legislature ought to be submitted directly to the Legislature, without any intermediary. In 1971, the Legislature required the DOF to evaluate and provide a biennial tax expenditure report to the Legislature (Chapter 1762, Statutes of 1971). Since 1971, the Legislature made the report annual (Chapter 268, Statutes of 1984)

and required the DOF to include specific data relating to tax expenditures (Chapter 49, Statutes of 2006). In the veto message on October 11, 2019, the governor echoed concerns regarding the duplicative nature of creating the tax expenditure review board. While it is meritorious for the state to consider the effectiveness of tax policies and program expenditures, this measure would create significant uncertainty with respect to the future of the state's tax structure and would adversely affect California's ability to retain and attract investment. The threat of repeal of tax incentives, considering our state's already high cost of doing business, poses a significant barrier to jobs, investment and the state's long-term economy. The bill's evaluation criteria would be improved if it was modified to include more comprehensive metrics that examine the 'multiplier' effects on state revenue from business investment/jobs and the reduction in public assistance spending due to greater employment – critical components of similar evaluations conducted by other states. However, such changes have not been forthcoming, and the bill's seemingly one-sided emphasis on measuring revenue decreases will yield a report that does not fully nor accurately assess the economic impact of tax incentives.”

Prepared by: Colin Grinnell / GOV. & F. / (916) 651-4119
6/19/20 16:48:16

****** END ******

THIRD READING

Bill No: SB 972
Author: Skinner (D)
Amended: 6/15/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 4-2, 5/28/20
AYES: McGuire, Beall, Hertzberg, Wiener
NOES: Moorlach, Nielsen
NO VOTE RECORDED: Hurtado

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Corporation taxes: disclosure

SOURCE: SEIU California

DIGEST: This bill requires the Franchise Tax Board to publish a list of large corporate taxpayers' tax liabilities and the amounts of tax credits claimed.

Senate Floor Amendments of 6/15/20 shift the requirement to post specified information from the State Controller to the Franchise Tax Board, and make conforming changes.

ANALYSIS:

Existing law:

- 1) Prohibits, generally, disclosure or inspection of any income tax return information.
- 2) Sets forth criminal sanctions, including imprisonment, which apply to Franchise Tax Board (FTB) personnel convicted of unlawful disclosure or inspection of tax records.
- 3) Directs FTB to notify a taxpayer if criminal charges have been filed for willful unauthorized inspection or disclosure of their tax data.

- 4) Contains explicit exemptions from the above requirements allowing FTB to disclose information to certain entities for specified purposes, such as to other state agencies to assist administering programs, such as to the Department of Health Care Services for use in determining eligibility for Medi-Cal.
- 5) Requires FTB to publish a list of the top 250 tax delinquencies over \$100,000 (AB 1418, Horton, Chapter 716, Statutes of 2006), which it subsequently expanded to the top 500 (AB 1424, Perea, Chapter 455, Statutes of 2011).
- 6) Allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives either to compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving.
- 7) Applies the combined report method of corporate taxation, which requires a corporation computing its California tax liability to include the tax returns of its unitary subsidiaries and affiliates into one report, and divide the corporation's overall income among the taxing jurisdictions in which it does business.

This bill:

- 1) Directs FTB to compile a list of all taxpayers subject to the Corporation Tax with gross receipts of \$5 billion or more for the taxable year reported on a return submitted in the previous calendar year.
- 2) Requires the list to include:
 - a) The taxpayer's name,
 - b) Its tax liability,
 - c) The taxable year for which the return is filed,
 - d) The total gross receipts for that taxable year, and
 - e) The amount of credits against the corporation tax claimed for that taxable year.
- 3) Provides that any determination with regard to calculating gross receipts must be made at the combined group level.
- 4) Requires FTB to post the information on its Internet website by May 1, 2021, and each May 1 thereafter, in a list that includes:
 - a) The taxpayer's name as listed on its tax return.

- b) The taxpayer's total amount of tax liability for the taxable year reported on a return in the previous calendar year.
 - c) The total amount of credits claimed by the taxpayer for the taxable year reported on a return in the previous calendar year.
- 5) Disconnects existing provisions of state law prohibiting disclosure or inspection of any income tax return information.
- 6) Defines several terms, including "credits claimed," "gross receipts," and "tax liability."

Background

In 2017, Congress enacted HR 1, which comprehensively changed federal personal income and corporation taxes. HR 1 enacted several changes that significantly reduced federal taxes on corporations, including lowering the statutory rate from 35% to 21%, allowing immediate expensing when purchasing or leasing new equipment, and adopting a "territorial" system that mostly excludes from tax the income of a U.S. company's foreign subsidiaries. As a result of these changes, the Institute on Taxation and Economic Policy recently found in a sample of 397 companies for the 2018 taxable year that the effective federal income tax rate is only 11.3%, or less than half of the new statutory rate, with many prominent firms paying no federal taxes at all. In California, the Legislative Analyst's Office (LAO) has found that the corporation tax's share of total general fund revenues has declined from 16% in the 1950s and 60s to 9% in the early 2010s. LAO states that changes in state law made since the mid-to-late 1980s and increased usage of tax credits reduced annual revenues by approximately \$3 billion annually.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/10/20)

SEIU California (source)
Alameda Labor Council
American Civil Liberties Union of California
California Alliance for Retired Americans
California Association of Professional Scientists
California Federation of Teachers
California Professional Firefighters
California School Employees Association
California Teachers Association
California Tax Reform Association

Evolve California
Friends Committee on Legislation of California
Professional Engineers in California Government
UDW/AFSCME Local 3930
United Food and Commercial Workers – Western States Council

OPPOSITION: (Verified 6/16/20)

Bay Area Council
Biocom
Calaveras County Taxpayers Association
California Bankers Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Life Sciences Association
California Manufacturers & Technology Association
California Retailers Association
California Taxpayers Association
CompTIA
Council on State Taxation
Family Business Association of California
Kern County Taxpayers Association
Orange County Taxpayers Association
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Silicon Valley Leadership Group
Solano County Taxpayers Association
Sutter County Taxpayers Association
TechNet
Western States Petroleum Association

ARGUMENTS IN SUPPORT: According to the author, “With California facing a \$54 billion deficit as a result of the COVID-19 pandemic, expenditures the state makes or forgoes merit thorough scrutiny to ensure that the budget enacted meets its intended goal. One area that policymakers and the public have little ability to assess is the over \$70 billion a year California gives in tax credits, deductions, exclusions, exemptions, or other tax benefits. California does not collect or make available data on the state tax breaks that a particular corporation takes or the amount of state taxes an individual corporation pays. In contrast, Florida, Indiana, Iowa, Maine, Maryland, Minnesota, Mississippi, Nebraska, Oklahoma, and

Washington all require companies to disclose varying levels of information on the state specific tax credits taken by those companies and the amount of taxes the companies pay to the state. Federally, all publicly traded companies must annually disclose to the Securities Exchange Commission data on the amount of federal taxes paid by the corporation, federal tax deductions taken, CEO and median employee pay, and other info. This publicly available data provides policymakers and the public the ability to evaluate the benefits of various tax policies that can guide future policy recommendations, and ensure appropriate oversight. By creating a database of corporations with \$5 Billion or more in gross receipts and requiring those corporations to disclose any state tax subsidies taken and the amount of state taxes paid, SB 972 provides a tool that policymakers and the public can access. SB 972 does not eliminate any tax benefit and does not raise any taxes, it simply provides transparency and access to information on how California spends its taxpayers' dollars."

ARGUMENTS IN OPPOSITION: According to the California Taxpayers Association, "This proposed law would violate the California Taxpayers' Bill of Rights, which requires the Franchise Tax Board to protect the rights of all California taxpayers. These rights include the right to privacy and confidentiality, and the right to pay no more than the correct legal amount of tax owed. There is no valid reason to violate the fundamental principle of taxpayer confidentiality. Information submitted by taxpayers to tax agencies should remain confidential to encourage the self-reporting upon which California's income tax system relies. Under SB 972 an erosion of trust would occur, as the public is acutely aware that tax agencies currently must safeguard their tax information, and this bill would break that trust. This bill discriminates against certain businesses based upon subjective criteria. The bill arbitrarily sets a threshold of \$5 billion annually in gross receipts for businesses whose confidential information must be shared with the public. Taxpayers should not be singled out based upon the amount of business they conduct. The COVID-19 pandemic is having a devastating impact on California workers, and the number of unemployment insurance claims has shattered the previous record high. Now more than ever, California needs to look for ways to improve its business climate so jobs can be preserved and Californians can go back to work when the pandemic is over. By violating business taxpayers' rights and creating a disincentive for using tax credits designed to increase job-creation, this legislation goes in the opposite direction."

Prepared by: Colin Grinnell / GOV. & F. / (916) 651-4119
6/17/20 16:55:01

**** END ****

THIRD READING

Bill No: SB 989
Author: Dahle (R)
Amended: 5/14/20
Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE: 7-0, 5/26/20
AYES: Stern, Jones, Allen, Caballero, Hertzberg, Jackson, Monning
NO VOTE RECORDED: Borgeas, Hueso

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Sierra Nevada Conservancy: Sierra Nevada Region: subregion:
definitions

SOURCE: Author

DIGEST: This bill expands the boundaries of the Sierra Nevada Conservancy (SNC) and redefines the North Sierra subregion.

ANALYSIS:

Existing law:

- 1) Establishes SNC to work in collaboration and cooperation with local governments and interested purposes for multiple purposes, including to reduce the risk of natural disasters, such as wildfires, protect, conserve, and restore the region's physical, cultural, archaeological, historical, and living resources, and protect and improve water and air quality.
- 2) Divides SNC into six sub-regions, as follows:
 - a) North Sierra, which includes Lassen, Modoc, and Shasta Counties.
 - b) North Central Sierra, which includes Butte, Plumas, Sierra, and Tehama Counties.

- c) Central Sierra, which includes El Dorado, Nevada, Placer, and Yuba Counties.
 - d) South Central Sierra, which includes Amador, Calaveras, Mariposa, and Tuolumne Counties.
 - e) East Sierra, which includes Alpine, Inyo, and Mono Counties.
 - f) South Sierra, which includes Fresno, Kern, Madera, and Tulare Counties.
- 3) Establishes the Sierra Nevada Watershed Improvement Program under SNC to protect, conserve, and restore the health and resilience of the watersheds and communities of the region, as prescribed.
- 4) Recognizes source watersheds as integral components of California's water infrastructure, providing most of the state's drinking and irrigated agricultural water. Existing law further recognizes that source watersheds play an important role in maintaining the reliability, quantity, timing, and quality of California's environmental, drinking, and agricultural water supply. Therefore, certain maintenance and repair activities in source watersheds are eligible for the same forms of financing as other water collection and treatment infrastructure.
- 5) Authorizes the Natural Resources Agency and the California Environmental Protection Agency to jointly develop a plan for forest and watershed restoration investments for the drainages that supply the Oroville, Shasta, and Trinity reservoirs.

This bill:

- 1) Expands SNC's boundaries to include the western sections of the Pit watershed not currently included in SNC's territory, as well as the Trinity, Upper Sacramento, and McCloud watersheds.
- 2) Redefines the North Sierra subregion to include Siskiyou and Trinity Counties.

Background

Source watersheds comprise the forests, meadows, and streams that supply water to California's major reservoirs. This includes the Feather, Pit, McCloud, Upper Sacramento, and Trinity watersheds, which supply the Oroville, Shasta, and Trinity reservoirs. SNC's territory currently includes the Feather watershed and much of the Pit watershed. Western sections of the Pit watershed and the Trinity, McCloud, and Upper Sacramento watersheds are not currently covered by a state conservancy.

Comments

This bill could address degradation in five critical source watersheds. By adding the Trinity, Upper Sacramento, and McCloud watersheds and the western sections of the Pit watershed to SNC's territory, this bill places five important source watersheds in California under one state conservancy. These watersheds provide drinking water for over 28 million Californians and agricultural water for millions of acres of farmland. Despite their critical importance to water supply and quality, habitat and biodiversity, and forest carbon sequestration, these watersheds are significantly degraded and at risk of further deterioration from climate change and catastrophic wildfire, a history of poor forest management, invasive species and pests, and development patterns. By bringing the five source watersheds under SNC, this bill could provide more opportunities for the state to holistically and systematically address these threats, potentially through SNC's Watershed Improvement Program, which seeks to approach watershed issues in a comprehensive manner.

AB 2551 Planning. The Legislature has previously targeted the watersheds in this bill through planning requirements in AB 2551 (Wood, Chapter 638, Statutes of 2018). This plan, when finished, could inform SNC's activities to systematically address forest and watershed health challenges in these watersheds.

Local Support for Concept. Aside from a letter of support from the Rural County Representatives of California (RCRC), none of the impacted counties have submitted individual letters to officially support this bill. However, the following counties have previously adopted resolutions in support of the concept:

- On December 4, 2018, Siskiyou County adopted a resolution to support legislative efforts to add the watersheds of the Upper Sacramento River, McCloud River, and Pit River to SNC's territory, as well as any other areas within the county.
- On November 9, 2019, the Shasta County Board of Supervisors adopted a resolution to support adjusting SNC's boundary to include a larger section of the county.

Further, according to RCRC, "expanding the boundaries of areas within SNC comports with the desire of Siskiyou County. In addition, RCRC believes it would further strengthen ongoing efforts that support improved environmental, economic, and social well-being in our communities.

Related/Prior Legislation

SB 45 (Allen, 2020) enacts the Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020, which, if approved by the voters, authorizes \$5.51 billion in bond funds to finance projects for a wildfire prevention, safe drinking water, drought preparation, and flood protection program. The bill is in the Assembly.

AB 3256 (Eduardo Garcia, 2020) enacts the Economic Recovery, Wildfire Prevention, Safe Drinking Water, Drought Preparation, and Flood Protection Bond Act of 2020, which, if approved by the voters, authorizes \$6.98 billion in bond funds to finance projects for an economic recovery, wildfire prevention, safe drinking water, drought preparation, and flood protection program. The bill is in the Assembly Rules Committee.

AB 2849 (Mark Stone, Chapter 499, Statutes of 2018) established the Sierra Nevada Watershed Improvement Program under SNC to protect, conserve, and restore the health and resilience of the watersheds and communities of the region, as prescribed.

AB 2551 (Wood, Chapter 638, Statutes of 2018) authorized the Natural Resources Agency and the California Environmental Protection Agency to jointly develop a plan for forest and watershed restoration investments for the drainages that supply the Oroville, Shasta, and Trinity reservoirs.

AB 2480 (Bloom, Chapter 695, Statutes of 2016) recognized and defined source watersheds as integral components of California's water infrastructure and made the maintenance and repair of source watersheds eligible for the same forms of financing as other water collection and treatment infrastructure.

AB 2600 (Leslie, Chapter 726, Statutes of 2004) established SNC to undertake various activities related to the Sierra Nevada Region, as defined, and prescribed the management, powers, and duties of SNC.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- \$450,000 (special fund or bond fund) annually and three positions for SNC to support coverage for the additional area.
- Unknown cost pressure, likely in the millions or tens of millions of dollars (bond funds), for new projects under the Watershed Improvement Program.

SUPPORT: (Verified 6/18/20)

Pacific Forest Trust
Rural County Representatives of California
Shasta Land Trust
Sierra Business Council
Siskiyou Land Trust
Siskiyou Outdoor Recreation Alliance
The Sierra Fund

OPPOSITION: (Verified 6/18/20)

None received

ARGUMENTS IN SUPPORT: According to the author, “The conservancy has a superior reputation for proper management of one of states most important resources, our headwaters. By having all these headwaters under one agency, it will give more opportunities to expand important forest management projects as well as meadow restoration projects to ensure that we continue to have healthy forests and a robust headwaters system to ensure all Californian’s have fresh clean water to drink and safe forests to visit.”

According to Siskiyou Outdoor Recreation Alliance, this bill’s proposed additions to SNC “represent very important segments of the Sierra Nevada watershed, which were omitted in the original region definition of 2004. SB 989 will correct this omission, and allow opportunity for the agency to more effectively carry out its mission... The areas, as defined in SB 989, to be included in the Sierra Nevada Conservancy are among the more significantly prone areas in California. Both the City of Mt. Shasta and the City of Dunsmuir of Siskiyou County lie within this area, both defined as Very High Fire Severity Zones by CAL FIRE. In particular, the community of Dunsmuir is one of the four most vulnerable communities to wildfire in California based on physical and social vulnerability studies by DirectRelief.org. The updated Sierra Nevada Conservancy region would now include a very important segment of Interstate 5 and interstate rail corridor, both of which were completely obstructed by the Delta Fire for 6 days in 2018, with subsequent traffic controls on a 17-mile section for weeks beyond that.”

Prepared by: Catherine Baxter / N.R. & W. / (916) 651-4116
6/19/20 16:48:17

**** END ****

THIRD READING

Bill No: SB 999
Author: Umberg (D), et al.
Amended: 5/29/20
Vote: 21

SENATE JUDICIARY COMMITTEE: 7-1, 5/22/20
AYES: Jackson, Durazo, Lena Gonzalez, Monning, Stern, Umberg, Wieckowski
NOES: Jones
NO VOTE RECORDED: Borgeas

SUBJECT: Mobilehome park residencies: rent control: exemption

SOURCE: Golden State Manufactured Home Owners League
Los Angeles County Board of Supervisors

DIGEST: This bill removes a provision in state law that exempts mobilehome leases from any otherwise applicable local rent control ordinance if, among other specified conditions, the lease term is greater than one year.

ANALYSIS:

Existing law:

- 1) Allows local jurisdictions to impose mobilehome rent control laws, provided that parks can still earn a fair return on their investment. (*Cacho v. Boudreau* (2007) 40 Cal.4th 341, 350.)
- 2) Exempts a mobilehome lease from any otherwise applicable local mobilehome rent control ordinance adopted, if the lease meets all of the following:
 - a) the rental agreement is in excess of 12 months' duration;
 - b) the rental agreement is entered into between the management and a homeowner for the personal and actual residence of the homeowner;
 - c) the homeowner was given at least 30 days from the date the rental agreement is first offered to accept or reject the rental agreement;

- d) the homeowner was given 72 hours after receiving a copy of the signed rental agreement in specified manners. (Civ. Code § 798.17.)

This bill:

- 1) Makes a series of findings and declarations regarding the number of mobilehome parks in California, the number of local jurisdictions that have enacted some form of rent control applicable to mobilehome parks, and the impact that economic fallout from the COVID-19 pandemic is having on mobilehome residents.
- 2) Makes state law preempting the application of local rent control ordinances to mobilehome leases that are over a year in length and meet other specified conditions inapplicable to leases entered into on or after February 13, 2020.
- 3) Repeals the exemption from local rent control ordinances for all mobilehome leases that are over a year in length, effective January 1, 2025.
- 4) Contains a severability clause.

Background

- 1) *Summary.* Mobilehomes are an important source of affordable housing in California. Despite their name, however, mobilehomes are usually difficult or impossible to relocate. To protect the affordability of mobilehome living and in recognition that mobilehome owners cannot simply move out in response to large rent increases, many local jurisdictions in California have passed ordinances that control how much a mobilehome park can increase the rent it charges to residents. Since 1985, however, state law has preempted the application of local rent control laws to mobilehome leases that are more than one year long. As a result, mobilehome parks can avoid local efforts to control the rate of mobilehome rent increases by entering into long-term leases with residents. This bill would phase out the statewide exemption for such long-term leases, thus restoring full local control over restrictions on mobilehome rent increases, regardless of the length of the mobilehome lease in question.
- 2) *Overview.* As originally enacted, Civil Code Section 798.17 simply exempted a mobilehome lease from local rent control if the lease was greater than a year in length and so long as prominent language in the lease informed the mobilehome tenant about the exemption. (SB 1352, Greene, Chapter 1084, Statutes of 1985) Almost immediately, however, the Legislature added more preconditions to the

contractual circumstances that would support the exemption. Specifically, the Legislature required parks to give residents at least 30 days before deciding whether to accept or reject the offer. Additionally, the Legislature mandated that parks give residents a 72-hour period in which to void a long-term, rent control exempt lease after signing it. These “cooling off” provisions appear to recognize the danger that mobilehome residents might be pressured or incentivized to enter quickly into long-term, rent control exempt leases without immediately realizing what they were giving up. Finally, the Legislature established that mobilehome residents who reject the long-term, rent control-exempt lease offered to them must be given a shorter, rent controlled lease on the same essential terms. (SB 2026, Petris, Chapter 1416, Statutes of 1986).

The park owners who oppose this bill assert that these basic procedural protections are sufficient to ensure that parks cannot take advantage of park residents. According to this viewpoint, if park residents choose to enter into long-term, rent control-exempt leases, it is only because they perceive some benefit in such a lease that outweighs the value of rent control. The author and proponents of this bill, conversely, believe that the protections in existing law do little to overcome the fundamental asymmetry at the heart of this bargaining relationship. In contrast to most mobilehome residents, park owners are constant and repeat players in mobilehome lease negotiations, they are versed in mobilehome law, and they often have ready access to sophisticated legal counsel.

- 3) *What this bill does and does not do.* In considering the merits of this bill, it may be helpful to distinguish between what this bill does and does not do.

Nothing in this bill prohibits residents and parks from entering into long term leases. The only difference would be that, where a local rent control ordinance is in place, the terms of any long-term lease would have to comply with that rent control ordinance.

Nothing in the bill requires any local jurisdiction to adopt rent control for mobilehomes if it does not wish to do so. Local jurisdictions would maintain their current authority to adopt mobilehome rent control measures – or not – as they see fit. Only the scope of that local authority would change. Under existing law, local governments are powerless to force leases of over a year in length to comply with their mobilehome rent control ordinances. Under this bill, local governments would have that option.

Nothing in this bill requires local jurisdictions to apply rent control to long-term leases. Any local jurisdiction that likes the currently existing exemption from rent control for long-term leases would be free to maintain it, or add it, as a provision of their local ordinance.

What this bill does do is lift a statewide limitation on the authority of local governments to apply rent control to long-term mobilehome leases. It would mean, thus, that any jurisdiction which has elected to enact rent control for mobilehomes could also decide whether that rent control should apply to long-term mobilehome leases – or not – at its own discretion and without the interference of a statewide mandate.

- 4) *Constitutional considerations.* Two components of this bill would have the practical effect of modifying some existing mobilehome leases. Both the federal and California constitutions contain provisions limiting the power of government to enact laws which impair contractual obligations. Though both constitutional contract clauses speak in absolute terms, courts have long held that they do not prohibit all state action that results in the modification of a contract. (*Lyon v. Flourney* (1969) 271 Cal.App.2d 774, 782.)

Instead, as the U.S. Supreme Court recently articulated in *Sveen v. Melin* (2018) 138 S. Ct. 1815, whether a state law violates the Contracts Clause must be determined through a two-step test. The threshold question is whether the state law operates as a “substantial impairment of a contractual relationship.” If not, the state law does not violate the Contracts Clause. If so, then the state law may still be constitutional if it is drawn in an “appropriate” and “reasonable” way to advance “a significant and legitimate public purpose.” (*Id.* at 1821-22.)

For a detailed discussion of how the constitutional contracts clauses might apply to this bill, please see the Senate Judiciary Committee Analysis.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/29/20)

Golden State Manufactured Home Owners League (co-source)
Los Angeles County Board of Supervisors (co-source)
California Alliance for Retired Americans
California Rural Legal Assistance Foundation
California Senior Legislature
Disability Rights California

Long Beach Residents Empowered
Pomona Economic Opportunity Center
Public Advocates
Public Interest Law Project
Public Law Center
Stonegate Mobile Home Owners Association
Brent A. Tercero, Councilmember, City of Pico Rivera
YIMBY Law
Western Center on Law & Poverty
2 individuals

OPPOSITION: (Verified 5/29/20)

California Association of Realtors
California Mobilehome Parkowners Alliance
Cabrillo Management
Western Manufactured Housing Communities Association

ARGUMENTS IN SUPPORT: According to the author:

The approximately one million fixed to modest-income seniors, disabled individuals, veterans, and immigrants living in mobilehomes throughout California are at the center of our affordable housing crisis. [...]

The immobility of these individuals heightens their need for consumer protections. With the prospect of moving so difficult, mobilehome residents simply cannot refuse extortionate rent increases through participation in the free market.

Instead of offering protections, state law has imposed multiple loopholes that have effectively prevented local governments from instituting local rent control ordinances for mobilehome residents. Mobilehome residents and advocates deserve to enjoy the protections they have fought to earn on the local level. SB 999 would restore local control and help ensure rent affordability for mobilehome residents by removing a state imposed loophole in local mobilehome rent stabilization ordinances.

As sponsor of the bill, the Golden State Manufactured Home Owners League writes:

Today, the housing crisis has become a humanitarian one.

When we ask local governments to do everything in their power to address the housing crisis, and they do, why then is the state saying we didn't mean it with state-imposed loopholes. [...]

The bill says there is no longer a state-imposed loophole that prevents mobilehome tenants from benefitting from what local government pass into law on the issue of affordability.

As co-sponsor of the bill, the Los Angeles County Board of Supervisors writes:

Mobilehome park residents [...] have generally been regarded as some of the most vulnerable low-income homeowners. A significant portion of mobile homeowners or tenants are also senior citizens who live on limited or fixed incomes.

[...] SB 999 is an important step toward ensuring rent stabilization protections are in place for vulnerable homeowners and tenants by creating price stability and certainty and removing the risk of unexpected and substantial rent increases.

ARGUMENTS IN OPPOSITION: In opposition to the bill, Western Manufactured Housing Communities Association writes:

In addition to our objection to this legislation on constitutional grounds, there are ample policy reasons to oppose the measure. Long-term leases provide certainty and stability for mobilehome park residents. [...] SB 999 also effectively eliminates federal affordable housing financing opportunities through the FHA program. [...] This legislation would also interfere with leases that balance rents over time. [...] In jurisdictions where rent control has been imposed on mobilehome parks, the irony is that rent control limits the supply of affordable housing that can be financed by prospective homebuyers. The reason for this conundrum is

actually quite simple – if rents are capped, the sales price of the home increases. [...] WMA is additionally concerned that SB 999 will have the unintended consequence of stifling mobilehome park amenities and upgrades. Long-term leases are often required by institutions providing credit to parkowners. Without these leases, it will likely be more expensive to borrow money for park improvements [...].

In further opposition to the bill, California Mobilehome Parkowners Alliance writes:

SB 999 would repeal Civil Code section 798.17 [...] which was originally cosponsored by park residents and park owners [...] to encourage the use of long-term leases out of recognition that they are beneficial to both park owners and residents. [...]

While the proponents of SB 999 refer to Civil Code 798.17 as a loophole in state law, it is an option which provides homeowners the protections they need to negotiate on even terms with a prospective landlord.

Prepared by: Timothy Griffiths / JUD. / (916) 651-4113
6/1/20 10:02:22

****** END ******

THIRD READING

Bill No: SB 1024
Author: Jones (R)
Amended: 4/30/20
Vote: 21

SENATE TRANSPORTATION COMMITTEE: 13-0, 5/29/20
AYES: Beall, Allen, Dahle, Dodd, Galgiani, Lena Gonzalez, Grove, McGuire,
Melendez, Morrell, Roth, Rubio, Wieckowski
NO VOTE RECORDED: Skinner, Umberg

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Off-highway vehicles

SOURCE: Author

DIGEST: This bill makes various changes to pertaining to the identification and operation of certain off-highway vehicles (OHV), as specified.

ANALYSIS:

Existing law:

- 1) Requires, generally, motor vehicles that are operated or used exclusively off the highways to be issued and display an identification plate or device issued by the Department of Motor Vehicles (DMV).
- 2) Specifies certain vehicles are exempt from this requirement, including four-wheeled motor vehicles operated solely in organized racing or competitive events upon a closed course, as specified.
- 3) Permits a motorcycle issued a special transportation identification device to be transported on a highway to and from a closed course. Further authorizes a special transportation identification device to be issued upon payment of a fee.

- 4) Requires DMV, upon identifying an OHV subject to identification, to issue to the owner a suitable identification plate or device that is capable of being attached to the vehicle, as specified. Additionally requires DMV to determine the size, color, and letters or number of the identification plate or device issued for OHVs. Further specifies a violation of the Vehicle Code is punishable as an infraction.
- 5) Requires all OHV identification plates or devices to be displayed in a specified manner, including on the left fork leg of a motorcycle, either horizontal or vertical, and visible from the left side of the motorcycle.
- 6) Imposes, generally, specified fees on off-highway motor vehicles, including, among others, a service fee of \$7 for the issuance or renewal of identification of off-highway motor vehicles subject to identification and a special fee of \$33 paid at the time of payment of the service fee.
- 7) Requires certain fees associated with OHVs to be deposited in the Off-Highway Vehicle Trust Fund (OHV Fund), and requires moneys in the Fund to be allocated for specified purposes related to off-highway recreation.
- 8) Requires all OHVs to meet specified requirements, including, but not limited to, a requirement that the vehicle be equipped with a spark arrester maintained in effective working order. Additionally, exempts from these requirements certain OHVs being operated in an organized racing or competitive event upon a closed course.

This bill:

- 1) Exempts specially constructed OHVs operated solely in organized racing or competitive events upon a closed course from the identification device requirement for motor vehicles operated exclusively off the highways.
- 2) Repeals provisions relating to special transportation identification devices for motorcycles and corresponding fees, and makes other related conforming changes. Additionally provides that competition all-terrain vehicles (ATVs) are not exempt from identification device requirements, as specified.
- 3) Requires that for the issuance or renewal of an OHV or ATV that is model year 2022 or newer and used solely for purposes of competition, that a specified configuration for the vehicle identification number and product identification number is established and further requires the OHV or ATV is labeled solely for competition use by the United States Environmental Protection Agency.

- 4) Imposes restrictions on the operation of a competition motorcycle or ATV on public lands, including, but not limited to, requirements that a rider possess a current and valid competition card from a race-sanctioning organization when practicing on public lands outside of a sanctioned event, and that a competition motorcycle or ATV have an off-highway motor vehicle identification label in order to be operated on public lands.
- 5) Exempts, further, ATVs with engines below a specified size from the abovementioned identification requirement.
- 6) Requires that a competition motorcycle display an identification plate or decal on the left side of the motorcycle, as specified.
- 7) Imposes a fee on competition motorcycles and ATVs in an amount not to exceed specified costs, including, but not limited to, the regulatory costs of the DMV and California Highway Patrol (CHP) for the administration and enforcement of OHVs used for competitive purposes. Further specifies the fee may be imposed up to \$104 at the time of registration renewal or issuance.
- 8) Requires, for OHVs used in competition that would qualify for certain equipment exemptions, these vehicles to be equipped with a muffler, spark arrester, and silencer or other device that limits noise emissions when operating on public lands.

Comments

- 1) *Author's statement.* According to the author, "The Red Sticker has allowed competition motorcycles to operate in the state of California for the past two decades. This regulation is within the California Air Resources Board (CARB) and not within statute. The regulation is sunseting in 2021, and losing it will end a viable competition sport in California, decimate local economies that rely on this sport, wreak havoc in motorcycle sales, and stop almost \$4 million that annually go to the OHV Trust Fund. This bill's Competition Sticker will replace the Red Sticker and continue the revenue stream, as well as the advantages of identification that come with the program—including allowing law enforcement to trace these types of vehicles."
- 2) *Red sticker program.* As a means to address air quality and greenhouse gas compliance issues, CARB established regulations to limit the use of OHVs that do not meet emission standards applicable for California OHV riding areas. Upon establishment of the regulations, CARB and DMV worked together to develop criteria for identifying non-complying OHVs. Currently, OHVs are

registered by DMV and are issued a red or green sticker depending upon certain criteria:

Green stickers are issued for all California OHVs year model 2002 and older, including those that were previously issued a red sticker, and to 2003 and newer complying vehicles. Green stickers are issued to OHVs for year round use at all California OHV riding areas.

Red stickers are issued to 2003 year model and newer OHVs that are not certified to California OHV emission standards. If an OHV has a "3" or "C" in the eighth position of the vehicle identification number (VIN) then the vehicle is issued a red sticker. Red stickers are issued to OHVs that can use California OHV riding areas for seasonal use only. CARB notes that it first adopted OHV exhaust standards in 1994, in part to reduce emissions from high emitting two-stroke OHVs. In 1998, after extensive collaboration with stakeholders, the red sticker program was created. Under the current program, beginning with the 2003 model year and older, OHVs that do not meet emissions standards receive a red registration sticker from DMV.

Specifically, for red sticker OHVs, the availability to operate is based on a seasonal calendar that varies for the nine state OHV recreational parks and many sections of federal park lands. While some parks allow red sticker OHVs to operate year round, others enforce strict periods of operation. During peak ozone season, the red sticker limits operation at certain off-highway recreational vehicle parks located in non-attainment areas. Additionally, state statutes and regulations specify the locations to affix both red and green stickers on the vehicle depending on the type of OHV, set basic equipment requirements, and exempts program requirements if the OVH is operated solely on private property.

- 3) *Red Sticker Sunset.* In July 2013 CARB began conducting an assessment of the red sticker program. Based on the outcome of the assessment, CARB subsequently worked closely with industry stakeholders and other state agencies to develop regulatory amendments in 2019 to end the Red Sticker Program in 2021. CARB notes in its information digest pertaining to the 2019 amendments, "The red sticker program was envisioned as a temporary measure to provide stability in the market while manufacturers developed a full range of OHRV that complied with California's emissions standards. This temporary measure has now been in effect for more than twenty years, and the majority of off-highway motorcycles (OHMC) sold in California are red sticker vehicles with no emissions controls."

- 4) *Moving forward.* The provisions specified in this bill aims to strike a balance between allowing certain OHVs to practice and professionally compete within the state and curbing the continuing sale and use of OHVs that do not meet emission requirements. The author asserts that allowing OHVs to continue to operate for competitive purposes is vital to many local economies and establishing the proper identification for these particular OHVs and ATVs ensures that they are appropriately used. As CARB has indicated that the red sticker program was intended to only remain temporarily; the program designed by this bill allows for the continued use of certain OHVs solely for competitive purposes while additionally incentivizing riders to purchase and operate green sticker OHVs – which meet CARB emission standards and are not subject to a seasonal riding schedule. Provisions in this bill also allow for OHV youth training programs to continue by State Parks and additionally provides state departments the flexibility to adjust program fees to reflect ongoing program costs.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- One-time up-front costs, likely in the low hundreds of thousands of dollars, for the DMV to make necessary changes to vehicle registration IT systems to implement a new competition identification program and establish associated fees. (Motor Vehicle Account)
- Unknown net fee revenue impacts. This bill imposes a new fee of up to \$104, upon issuance of a competition identification by DMV, which would be deposited into the OHV Fund, and prohibits the imposition of any other fees on the issuance or renewal of an identification for a competition OHV, which includes fees deposited into both the OHV Fund and the Motor Vehicle Account for specified purposes under the current Red Sticker identification program. Staff notes that overall impacts to the OHV Fund are unquantifiable, while this bill would appear to result in a future revenue loss to the Motor Vehicle Account. Absent this bill, however, there would be a decline in revenues deposited into both the OHV Fund and Motor Vehicle Account with the sunset of the Red Sticker program in 2021, as noted below.
- The new fees would be sufficient to cover DMV and CHP ongoing administrative and enforcement costs related to the competition OHV identification program, as well as the Department of Parks and Recreation's costs for the maintenance of state public lands related to the activities of competition OHVs on those lands. (OHV Fund)

SUPPORT: (Verified 6/18/20)

American Motorcycle Association
California Motorcycle Dealers Association
District 36 Motorcycle Sports Committee, Inc.
Fox Racing
Off Road Vehicle Legislative Coalition
Sacramento Pacific International Trails Society

OPPOSITION: (Verified 6/18/20)

None received

Prepared by: Manny Leon / TRANS. / (916) 651-4121
6/19/20 16:48:18

**** END ****

THIRD READING

Bill No: SB 1049
Author: Glazer (D), et al.
Amended: 5/29/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 6-1, 5/28/20
AYES: McGuire, Beall, Hertzberg, Hurtado, Nielsen, Wiener
NOES: Moorlach

SUBJECT: Cities and counties: ordinances: short-term rentals

SOURCE: Author

DIGEST: This bill increases the administrative penalties that local agencies may impose for violations of short-term rental ordinances.

ANALYSIS:

Existing law:

- 1) Allows counties and cities to adopt and enforce ordinances that regulate local health, safety, peace, and welfare.
- 2) Allows, as an alternative to civil and criminal enforcement mechanisms, a local agency's legislative body to make any violation of any of its ordinances subject to an administrative fine or penalty.
- 3) Provides that a violation of a city ordinance is a misdemeanor unless by ordinance it is made an infraction. In general, every ordinance violation that is determined to be an infraction is punishable by:
 - a) A fine not exceeding \$100 for a first violation.
 - b) A fine not exceeding \$200 for a second violation of the same ordinance within one year.

- c) A fine not exceeding \$500 for each additional violation of the same ordinance within one year.
- 4) Establishes higher limits for a violation of local building and safety codes determined to be an infraction, punishable by:
 - a) A fine not exceeding \$130 for a first violation.
 - b) A fine not exceeding \$700 for a second violation of the same ordinance within one year.
 - c) A fine not exceeding \$1,300 for each additional violation of the same ordinance within one year.
 - d) A fine not exceeding two thousand five hundred dollars (\$2,500) for each additional violation of the same ordinance within two years of the first violation if the property is a commercial property that has an existing building at the time of the violation and the violation is due to failure by the owner to remove visible refuse or failure to prohibit unauthorized use of the property.
- 5) Allows cities to impose fines and penalties through civil or criminal proceedings. These fines and penalties are limited to \$1,000 per violation and six months of imprisonment.

This bill:

- 1) Allows both cities and counties to enact administrative penalties for violations of short-term rental ordinances with the following fine amounts:
 - a) A fine not exceeding \$1,500 for a first violation.
 - b) A fine not exceeding \$3,000 for a second violation of the same ordinance within one year.
 - c) A fine not exceeding \$5,000 for each additional violation of the same ordinance within one year.
- 2) Defines short-term rental as a residential property that is not a hotel or motel that is rented to a visitor for fewer than 30 consecutive days or less.
- 3) Requires a city levying any fines for a second or subsequent violation of any short-term rental ordinance to establish a process for granting a hardship waiver

to reduce the amount of the fine upon a showing by the responsible party that they have made a bona fide effort to comply after the first violation and that payment of the full amount of the fine would impose an undue financial burden.

Background

- 1) *Purpose of the bill.* According to the author, “Short-term rentals have exploded in popularity over the last decade with the rise of hosting platforms such as Airbnb, HomeAway, and VRBO. Airbnb alone now lists short-term rentals in 81,000 cities and 191 countries. Though short-term rentals offer a way to improve tourism and earn owners some extra money, their recent proliferation has allowed bad actors to use the platform to advertise and secure homes for large parties. With social media to amplify the reach of a party ad, a short-term rental property can quickly become the site of underage drinking, brawls, noise complaints, and – in some instances – violence. In the last half of 2019 alone, 42 people were shot inside or just outside short-term rental properties across the United States and 17 died. Many homes on these platforms rent for \$1,000, \$2,000, \$3,000, or more dollars per night. In these instances, a maximum fine of \$1,000 per violation is not enough to deter bad actors from trying to make a quick profit.”
- 2) *Root of the problem?* Over the past years, some city and county officials have criticized short-term rentals for creating public safety concerns, with some California local jurisdictions creating strict short-term rental ordinances and others outright banning short-term rentals. According to the San Francisco Chronicle, between May 2019 and November 2019, at least 42 people have been shot inside or just outside the short-term rental properties across the United States, including in the California cities of West Covina, Fair Oaks, Hacienda Heights, Sacramento, and Orinda. However, it is unclear whether creating a new fine violation structure specifically for short-term rentals will deter behavior any more than the current fine violation structure. Does creating a new fine structure specifically for short-term rentals address the problem occurring in short-term rentals or would additional regulation to ensure platforms better oversee listings and guest generate better results?
- 3) *Paid in full.* Excessive fines can weigh heavily on people with limited means, while having a limited deterrent effect on those with deeper pockets. SB 1049 allows cities and counties to pursue fines for violations of short-term rental ordinances in an effort to encourage greater compliance, but city and county officials may seek the maximum fines for other reasons, without regard for the deterrent effect or the effect on the person or entity responsible for the

violation. Over the past several decades, city budgets have been squeezed by ballot measures such as Proposition 13 and Proposition 218 and new mandates from the state policymakers. Most recently, the COVID-19 pandemic has strained local government budgets. Local government revenue sources are often constrained to specific purposes, leaving local governments with fewer general fund resources. Fine revenues are one remaining source of funds for general activities. As such, local governments may be tempted to maximize revenue from fines.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 5/29/20)

California Hotel and Lodging Association

OPPOSITION: (Verified 5/29/20)

None received

Prepared by: Gustavo Medrano / GOV. & F. / (916) 651-4119
6/1/20 11:29:37

**** END ****

THIRD READING

Bill No: SB 1099
Author: Dodd (D) and Glazer (D), et al.
Amended: 6/2/20
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 4-1, 5/29/20
AYES: Allen, Hertzberg, Hill, McGuire
NOES: Dahle
NO VOTE RECORDED: Bates, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Emergency backup generators: critical facilities: exemption

SOURCE: Author

DIGEST: This bill requires air districts to develop stipulations for an order of abatement that would allow permitted facilities to use backup generators (BUGs) in exceedance of hour limits, should they enter into a stipulated order of abatement (SOA) with the local air district. This bill further dictates some of the terms of that SOA, including reporting of use, and a schedule for replacing older polluting generators with the cleanest, feasible, applicable technology that is economically feasible.

ANALYSIS:

Existing federal law:

- 1) Sets, through the Federal Clean Air Act (FCAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants and requires states to prepare, submit, and adopt a State Implementation Plan (SIP) to limit air pollution and attain federal standards. (42 U.S.C. §7401 et seq.)

Existing state law:

- 1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, among other things, to coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Safety Code (HSC) §39500 et seq.)
- 2) Creates the 35 air pollution control and air quality management districts (air districts) to be responsible for regional air quality planning, monitoring, and stationary source and facility permitting. (HSC §40000 et seq.)
- 3) Defines “emergency use” as providing electrical power during specified events, including the loss of normal electrical power for reasons beyond the control of the operator. (Title 17 of the California Code of Regulations §93115.4)
- 4) Allows an air district board or air pollution control officer to, after notice and hearing, order an entity to abate its emissions from a given technology, and such an order may contain stipulations regarding that abatement. (HSC § 42451)

This bill:

- 1) Defines pertinent terms for Section 42451.1 of the Health and Safety Code.
- 2) Makes findings and declarations regarding:
 - a) The impacts on humans and the environment of increasing wildfires.
 - b) How Public Safety Power Shutoffs (PSPS) events create challenges for water agencies moving and delivering water.
 - c) The necessity for action to reduce impacts from different events on different facilities, and that that action provide better access to alternative power sources for the purposes of water delivery and wildfire response.
- 3) Requires air districts to develop stipulations for an SOA that allows the operator of a critical facility, as defined, to use a permitted emergency BUG in exceedance of that permit’s runtime and testing and maintenance limits if both of the following are met:
 - a) The operation of the BUG occurs as the result of a deenergization event or other loss of power.

- b) The testing and maintenance for that emergency BUG is in accordance with the National Fire Protection Association Standard 110 for Emergency and Standby Power Systems.
- 4) Mandates some of the conditions of a mutually agreed-upon SOA to permit BUG use in exceedance of runtime limits, including:
 - a) A schedule for the replacement of Tier 1 or lower emergency BUG with the cleanest, feasible, and applicable technology.
 - b) Reporting requirements about the use of the BUG due to PSPS or testing.
 - c) Logistical considerations for duration of the SOA, and approval by the local air district hearing board.

Background

- 1) *Backup generators.* In order to mitigate the damage of power loss, many of these critical service providers may rely on BUGs to replace lost grid power. Additionally, many businesses may use BUGs to avoid catastrophic system disruptions and to minimize economic disruption that could result from prolonged power outages. However, this use of BUGs may result in air quality and public health impacts.

According to estimates from ARB, nearly 125,000 BUGs were used in California during PSPS events in October 2019. Assuming an average of 50 hours of operation each, those generators released a cumulative total of 166.4 tons of nitrogen oxides (NO_x), 19.4 tons of particulate matter (PM), and 8.9 tons of diesel PM. The diesel PM release was roughly equivalent to 29,000 additional heavy-duty diesel trucks being used for the month.

- 2) *Health impacts of diesel emissions.* In 1998, California identified diesel PM as a toxic air contaminant based on its potential to cause cancer, premature death, and other health problems. Numerous studies have documented a range of adverse health impacts from long-term exposure to diesel pollution, including increased risk for respiratory and cardiovascular illnesses, such as asthma, heart attacks and lung cancer, stunted lung growth in children, adverse birth outcomes, more frequent emergency room visits, and higher mortality rates.
- 3) *Air district permitting rules.* Each of the state's 35 air districts adopts their own sets of regulations and rules tailored to the sources and air quality challenges of its region and overseen by ARB. Ultimately, these actions are designed to achieve NAAQS set by the FCAA. Collectively, these strategies (i.e. emission

standards, fuel regulations, emission limits, etc.) are included in the SIP. ARB is the lead agency in California for achieving the emission reductions goals and timelines described in the SIP. The 35 air districts, as well as other agencies, prepare SIP elements to be reviewed and approved by ARB before being integrated into the SIP.

With few exceptions, anyone constructing or operating a facility that emits air pollutants must obtain an appropriate permit from the local air district. Each air district establishes its own fee schedule, and may maintain different requirements. An air district uses these permits to assess the air pollution impacts of stationary sources within its jurisdiction, and it may require additional standards or control technologies be used to align permitted entities' emissions with the SIP.

- 4) *Using and maintaining BUGs in California.* Because of the air quality and public health impacts of diesel emissions, ARB and air districts have adopted rules and regulations that affect the amount of time BUGs can be used. The amount of time permitted for routine maintenance is dictated by ARB's Airborne Toxic Control Measure for Stationary Diesel Engines. This regulation—and the implementing rules from air districts—dictates that older, more-polluting engines be tested for less time to control cumulative emissions.

There is currently no statewide regulation limiting the hours a BUG can be run. Notably, the South Coast Air Quality Management District (SCAQMD) has adopted such rules. SCAQMD's Rule 1110.2 dictates that a permitted BUG may only be run for 200 hours per year, including usage for maintenance and testing (an estimated 10-30 hours, depending on generator technology).

- 5) *Air district rules during emergencies.* Air districts provide for administrative exemption from established rules and regulations through the variance process, or in some cases have specific rules that do not apply during an emergency. For example, Yolo-Solano Air Quality Management District's Rule 110 exempts emergency standby engines used during an emergency from the District's other regulations on engines used over 200 hours per year, and the Bay Area Air Quality Management District's Rule 9-8-330 states a person may operate an emergency standby generator an unlimited number of hours for emergency use.

If a permitted facility anticipates they will need to exceed their authorized emissions due to reasons outside their control, they may submit a request for a variance to the board of the air district, who will hear and vote on the request at a public meeting. Should an interruption arise without time for the normal variance and hearing process, there is also an established emergency variance

process. When an emergency variance is requested, it can be granted by the chair of the air district board (or a designee) without the board convening.

Comments

- 1) *Is there a real problem?* The Senate Environmental Quality Committee has seen no evidence of BUG regulations causing any facility to shut down or receive a fine during a PSPS event. Moreover, it is the understanding of staff that the only air district whose rules could limit BUG use during a PSPS is SCAQMD. Despite this, advocates for SB 1099 and similar BUG-exempting bills claim that the looming possibility of such consequences merits legislative action. It is impossible to predict the extent to which California's utility providers will rely on grid deenergization to mitigate wildfire risk going forward.
- 2) *Stipulated Orders of Abatement.* An SOA is a legally-binding agreement between an air district and a facility operating a stationary pollution source. An air district hearing board has statutory authority to issue such an order, with terms and conditions, to a facility. In the event that a facility expects they may exceed their runtime limits and be in violation of their permit, they could enter into an SOA to find a mutually-agreeable solution to that potential exceedance with the air district. Instead of being fined for exceeding their permit conditions, the facility could be required to address their emissions by, for example, agreeing to retire highly polluting generators under a defined timeline.

Committee amendments to SB 1099 ensured that local air district authority is maintained in determining conditions that would allow a BUG to be used for more hours than it is permitted. Currently, most of the permitted BUGs in the state do not have their runtime limited during an emergency. The committee amendments do not require all critical facilities to enter into SOAs or retire their BUGs, nor do they require air districts to change their rules on runtime limits. SB 1099 ensures that, if critical facilities are subject to runtime limits, they have a clear and available path to certainty by entering into a mutually-agreeable SOA with their local air district.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 6/9/20)

Association of California Water Agencies
California Cable & Telecommunications Association

California Groundwater Coalition
California Municipal Utilities Association
California Water Service
Calleguas Municipal Water District
City of Thousand Oaks
Eastern Municipal Water District
Elsinore Valley Municipal Water District
Irvine Ranch Water District
Laguna Beach County Water District
Las Virgenes Municipal Water District
Mesa Water District
Metropolitan Water District of Southern California
Municipal Water District of Orange County
Northern California Water Association
Public Water Agencies Group
Rowland Water District
San Diego County Water Authority
Sanitation Districts of Los Angeles County
Santa Clarita Valley Water Agency
Trabuco Canyon Water District
Western Municipal Water District

OPPOSITION: (Verified 6/9/20)

Bay Area Air Quality Management District
California Air Pollution Control Officers Association
Environmental Defense Fund
Republic Services, Inc
South Coast Air Quality Management District

ARGUMENTS IN SUPPORT: According to the California Municipal Utilities Association, “The widespread use of Public Safety Power Shutoffs (PSPS) to mitigate the risk of these wildfires could have significant impacts on critical facilities including water and wastewater agencies, such as the inability to pump water, inadequate fire flows, sewage backups and air conditioning shutoffs in facilities with temperature-sensitive equipment. If these agencies cannot access reliable electricity, communities could also face a public health crisis if they lack safe drinking water for consumption, cooking and sanitation.

“To mitigate these effects and ensure reliable electricity during a PSPS or other catastrophic loss of power like a wildfire, critical facilities must depend on their

onsite emergency generators. However, state and local air district restrictions for some existing generators adopted prior to the widespread use of PSPS do not provide enough time for proper testing in advance of an event or enough runtime during an event.”

ARGUMENTS IN OPPOSITION: According to the California Air Pollution Control Officers Association, “This bill appears to be a solution looking for a problem. To date, the bill’s supporters have not identified a single instance of an air district preventing an essential service provider from operating BUGs or penalizing their use in response to an actual emergency. Local air districts understand the importance of BUGs operating during a PSPS event or other emergency to provide necessary power, especially for essential services. However, it is also important to ensure that this power is provided in a way that minimizes the potential harmful effects of significant diesel emissions on the community that can be caused by the operation of BUGs. The potential statewide effects of this bill could be significant, especially for older BUGs that emit greater amounts of NOx and toxic emissions while operating, with these emissions occurring near sensitive receptors, such as children and the elderly.”

Prepared by: Eric Walters / E.Q. / (916) 651-4108
6/10/20 13:25:08

**** END ****

THIRD READING

Bill No: SB 1102
Author: Monning (D)
Amended: 5/5/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 5/14/20
AYES: Hill, Jackson, Mitchell, Pan
NOES: Morrell

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Employers: Labor Commissioner: required disclosures

SOURCE: California Rural Legal Assistance Foundation

DIGEST: This bill requires 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 requires 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.

ANALYSIS:

Existing law:

- 1) Empowers the Labor Commissioner's office, within the Department of Industrial Relations, with ensuring a just day's pay in every workplace in the state and promote economic justice through robust enforcement of labor laws. (Labor Code §79-107)
- 2) Establishes the federal H-2A Program for Temporary Agricultural Workers allowing U.S. employers or agents who meet specific requirements to bring

foreign nationals to the United States to fill temporary agricultural jobs. Among other things, existing federal law specifies that as a condition for approval of such a petition, the Secretary of Labor must certify that:

- a) There are not sufficient workers 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 in such labor or services will not adversely affect the wages and working conditions of workers in the United States similarly employed.
(Title 8 U.S. Code Section §1188)
- 3) Requires that employers, at the time of hire, provide to each employee a written notice, in the language the employer normally uses to communicate employment-related information to the employee, containing, among other things, the following information:
- 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 rate.
 - b) Allowances, if any, including meal or lodging allowances.
 - c) The regular payday designated by the employer.
 - d) The name of the employer, including any “doing business as” names.
 - e) The physical address of the employer’s main office or principal place of business, mailing address, if different, and the telephone number.
 - f) The name, address, and telephone number of the employer’s workers’ compensation insurance carrier.
(Labor Code §2810.5)
- 4) Specifies that an employer shall notify his or her employees in writing of any changes to the information set forth in the notice (per above) 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 prepare, and make available to employers, a template for employer use with the information specified above. (Labor Code §2810.5)

This bill:

- 1) Enacts “The California Legal Rights Disclosure Act for H-2A Farmworkers” requiring employers of California employees admitted under the federal H-2A program to provide each H-2A employee, on the first day of work with the original petitioner or transferred employer, a written notice that includes specified information relative to an H-2A employee’s rights under law.
- 2) Specifies that the Labor Commissioner may combine this information with the template currently required under Labor Code Section 2810.5, or the Commissioner may create a separate template specifically for H-2A employers containing this information.
- 3) Requires every employer to also notify H-2A employees of any federal or state emergency or emergency disaster declaration then in effect, or within seven days after any new declaration is issued, that may affect the health and safety of H-2A employees, as specified.
- 4) Prohibits an H-2A employer from retaliating against an H-2A employee for raising questions about the declarations’ requirements or recommendations.
- 5) Requires that this notice include a section titled “Summary of Key Legal Rights of H-2A Workers Under California Laws,” that includes information on the following (with exact text as written in the bill):
 - a) Mandatory Notice of Existence of Federal or State Emergency or Disaster Declarations.
 - b) Mandatory Wage Rate: H-2A workers must be paid at the highest of: (A) the federal H-2A program wage rate (per the US Department of Labor); (B) the collective bargaining agreement rate; or (C) the state minimum wage rate. (per Code of Federal Regulations, 20 CFR § 655.120)
 - c) Overtime Wage Rate for Employers of 26 or More Employees. (per LC § 857-864)
 - d) Overtime Wage Rate for Employers of 25 or Fewer Employees. (per LC § 857-864)

- e) Required Pay Periods. (per LC §205-205.5)
- f) Employees Must Be Paid for All Hours Worked. (per LC §226.2)
- g) Required Rest and Meal Periods. (per LC §512)
- h) Charges for Meals: An H-2A employee shall not be charged for meals not taken. (per 20 CFR § 655.120)
- i) Compensation while Being Transported by H-2A Employer from the Employee's Housing to the Employer's Worksite: employees must receive compensation at their regular rate of pay for time spent while being transported from the housing provided to the worksite.
- j) Housing Protections and Tenant Rights: H-2A employees residing in employer-provided housing is considered a tenant under California law and, in addition to other rights, is permitted to receive guests of their choosing, is entitled to be provided housing that meets minimum habitability standards under law, and shall not be required to submit to any searches of the employee's housing. (per 20 CFR § 655.120; Healthy and Safety Code §17008.5)
- k) No Retaliation for Exercise of Labor Rights. (per LC §96-98.6)
- l) Itemized Wage Statements for Hourly and Piece-Rate Employees. (per LC §226)
- m) Additional Required Itemized Wage Statement Information and Pay for Piece-Rate Employees. (per LC §226.2)
- n) Required Sexual Harassment Training. (per LC §1684)
- o) Required Toilets, Handwashing Facilities and Drinking Water (per CCR Title 8, Section 3457. Field Sanitation). During a declared state or federal emergency or disaster declaration, there may be additional requirements, or recommendations, respecting toilet, handwashing, or potable water that apply to H-2A employers.
- p) Protections from High Heat Working Conditions (per CCR, Title 8, Section 3395. Heat Illness Prevention in Outdoor Places of Employment). During a declared state or federal emergency or disaster declaration, regarding wildfires or other natural disasters there may be additional requirements, or

recommendations, respecting protective gear or other practices that apply to H-2A employers.

- q) Required Pesticide Exposure Protections. (per LC §6300-6721)
- r) Required Workplace Safety Training (per CCR, Title 8, Section 3203. Injury and Illness Prevention Program). This training shall include health and safety procedures required or recommended under any federal or state emergency or disaster declarations.
- s) Transportation in Defined “Farm Labor Vehicles”: An H-2A employee being transported with eight or more workers in an employer’s or agent’s vehicle must be transported only in vehicles that have been annually inspected and certified by the Department of the California Highway Patrol and must have, at a minimum, a safety belt for each worker. (per 20 CFR 655.102)
- t) No Employer Charges Permitted for Tools or Equipment: The H-2A employer must provide all necessary tools or equipment and an H-2A employee must be fully reimbursed for tools or equipment purchased by the employee. Employees may not be charged for lost, stolen, or damaged tools or equipment. (per 20 CFR 655.122)
- u) Eligibility for Employee-Paid Health Insurance (per Covered California): Under a state or federal emergency or disaster declaration, an H-2A employee may also be eligible for sick leave. An H-2A employer shall not retaliate against an H-2A employee for raising questions about eligibility for sick leave, or seeking to avail themselves of sick leave protections.
- v) Workers’ Compensation for Injuries or Illness (per LC §3700): which may include an illness addressed by a state or federal emergency or disaster declaration. Prohibits an H-2A employer from retaliating against an H-2A employee for raising questions about eligibility for, or seeking to avail themselves of, workers’ compensation.
- w) Right to Complain to State Agencies & to Contact Others (for advice/ assistance). (per LC §98.6; §232, §1019)
- x) Contact Information for H-2A Employer.
- y) Additional Rights and Remedies: plainly state that these are only some of the H-2A workers’ rights and remedies.

- 6) Authorizes the Labor Commissioner to revise the template, as necessary, to:
 - a) Update overtime rates to reflect wage rates in effect pursuant to Labor Code Section 860.
 - b) Provide, update, or expand useful agency contact information.
 - c) Correct inconsistencies with current laws or regulations.
- 7) Requires the Labor Commissioner to prepare the template in Spanish and English, make it available to employers in the manner determined by the Commissioner, but also posted on the Commissioner's Internet Web site no later than January 2, 2021.
- 8) Requires the workplace rights notice under Labor Code Section 2810.5, which applies to employers in *all industries*, to also include notifying employees of the existence of either federal or state emergency or disaster declarations that may affect their health and safety.
- 9) Makes several findings and declarations pertaining to H-2A workers and their potential limited knowledge of basic legal rights and remedies under California law. Additionally, finds and declares that neither the US Department of Labor nor the California 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.

Background

Please see the Senate Labor, Public Employment and Retirement Committee analysis on this bill for background information.

Comments

Need for this bill? According to the author, "The program was designed to address temporary labor shortages in the agricultural industry, and California growers and farm labor contractors have increased their reliance on H-2A workers more than 10 fold since 2012. In 2019, more than 23,000 H-2A workers were admitted to California, the fourth highest number of H-2A workers in the country and, according to both the U.S. Department of Labor and California Employment Development Department, use of the program continues to increase. Many recent H-2A workers are entering the United States, and California, for the first time, and are unfamiliar with basic state workplace protections, such as overtime and meal

and rest period guarantees. The written contract they are provided includes a summary of some federal protections, but does not include state law rights.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/3/20)

California Rural Legal Assistance Foundation (source)
 California Immigrant Policy Center
 California Teamsters Public Affairs Council
 Centro de los Derechos del Migrante, Inc.
 Farmworker Justice
 National Association of Social Workers – California Chapter
 United Farm Workers
 Worksafe

OPPOSITION: (Verified 6/10/20)

Agricultural Council of California
 California Association of Winegrape Growers
 California Chamber of Commerce
 California Citrus Mutual
 California Farm Bureau Federation
 California Fresh Fruit Association
 Family Winemakers of California
 Grower-Shipper Association Central California
 Ventura County Agricultural Association
 Western Growers Association

ARGUMENTS IN SUPPORT: According to the sponsor, the California Rural Legal Assistance Foundation, neither the US Department of Labor nor the state Employment Development Department (which circulates H-2A job orders through the Cal-JOBS system) require H-2A employers to provide workers with information about the substantial body of California labor, housing, health and safety or other laws that protect them while they are here. In a review last year of more than 60 H-2A applications approved for circulation in California, the sponsor identified many which included terms and conditions inconsistent with California laws including the following:

- Meal deductions taken for all meals, and no rebate for meals not taken;
- No overtime rate stated (or incorrect overtime rate stated);
- Wage statements that do not meet California standards;

- Restrictions on housing that include, no female visitors; visitors must check in with housing manager; worker's housing subject to search; employees only in housing (no guests) and that no tenancy is established; and
- Failure to reflect that transportation time is compensable.

According to the sponsor, allowing these types of provisions in H-2A job orders in California directly leads to oppressive housing conditions, illegal deductions from wages, and outright wage theft.

ARGUMENTS IN OPPOSITION: A coalition in opposition to this bill argue that, SB 1102 is simply unnecessary and burdensome because H-2A employees are already afforded the same rights and protections under state and federal law as domestic employees. Employers are already required to provide H-2A employees with a written copy of the H-2A contract, in their native language, by the first day of work. Furthermore, the specified information that must be provided under the bill are already required to be provided to H-2A employees in the H-2A contract, or by law, including:

- The regular payday designated by the employer. (Labor Code sec. 2810.5.)
- The name of the employer, including any "doing business as" names used by the employer. (Labor Code sec. 226(a))
- The physical address of the employer's main office or principal place of business, and a mailing address, if different. (Labor Code sec. 226(a))
- The telephone number of the employer. (Labor Code sec. 2810.5)
- The name, address, and telephone number of the employer's workers' compensation insurance carrier. (Labor Code sec. 2810.5).
- That an employee: may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates. (LC sec. 2810.5)

Finally, SB 1102 requires employers to provide redundant information to employees, creating potential liability when the employer provides the information in one notice, but not another.

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
6/10/20 13:21:36

**** END ****

THIRD READING

Bill No: SB 1133
Author: Jackson (D)
Amended: 5/21/20
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 5/20/20
AYES: Moorlach, Jackson, Morrell, Wiener
NO VOTE RECORDED: Skinner, Bradford, Mitchell

SUBJECT: Peremptory challenges

SOURCE: California Judges Association

DIGEST: This bill extends a sunset provision which reduces the number of peremptory challenges that the prosecution and defense get in misdemeanor trials.

ANALYSIS:

Existing law:

- 1) Permits challenges to jurors under the following provisions:
 - a) A want of any of the qualifications prescribed by this code to render a person competent as a juror.
 - b) The existence of any incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party. (Code of Civil Procedure § 228)
 - c) A peremptory challenge exercised by a party to the action. (Code of Civil Procedure § 225(b))
- 2) Specifies a challenge for cause based upon bias may be taken for one or more of the following causes:

- a) Consanguinity or affinity within the fourth degree to any party or to any alleged witness or victim in the case at bar.
 - b) Having the following relationships with a party: parent, spouse, child, guardian, ward, conservator, employer, employee, landlord, tenant, debtor, creditor, business partners, surety, attorney, and client.
 - c) Having served or participated as a juror, witness, or participant in previous litigation involving one of the parties.
 - d) Having an interest in the outcome of the event or action.
 - e) Having an unqualified opinion or belief as to the merits of the action founded on knowledge of its material facts or of some of them.
 - f) The existence of a state of mind in the juror evincing enmity against, or bias towards, either party.
 - g) That the juror is party to an action pending in the court for which he or she is drawn and which action is set for trial before the panel of which the juror is a member.
 - h) If the offense charged is punishable with death, the entertaining of such conscientious opinions as would preclude the juror finding the defendant guilty, in which case the juror may neither be permitted nor compelled to serve. (Code of Civil Procedure § 229)
- 3) Permits each party (prosecution and defense) in criminal cases 10 peremptory challenges. There are an additional five peremptory challenges in criminal matters to each defendant and five additional challenges, per defendant, to the prosecution when defendants are jointly charged. (Code of Civil Procedure § 231(a))
- 4) Specifies 20 peremptory challenges per party in criminal matters when the offenses charged are punishable with death, or life in prison. There are an additional five peremptory challenges in criminal matters to each defendant and five additional challenges, per defendant, to the prosecution when defendants are jointly charged. (Code of Civil Procedure § 231(a))
- 5) Allows parties in criminal matters punishable with a maximum term of one year or less six peremptory challenges each. When two or more defendants are jointly tried, their challenges shall be exercised jointly, but each defendant shall be also entitled to two additional challenges which may be exercised separately,

and the state shall also be entitled to additional challenges equal to the number of all the additional separate challenges allowed to the defendants. (Code of Civil Procedure § 231(b))

- 6) Provides that the provisions limiting misdemeanors to six peremptory challenges are due to sunset on January 1, 2021. If the provisions sunset misdemeanor offenses punishable by more than 90 days would revert to 10 peremptory challenges.

This bill extends, to January 1, 2024, the sunset provision which reduces the number of peremptory challenges that the prosecution and defense get in misdemeanor trials.

Background

The current process permits the parties to remove jurors from the panel in a criminal case by exercising both challenges for “cause” and “peremptory” challenges. These challenges are made during the voir dire phase of the trial, during which the court, with the assistance of the attorneys, inquires of the prospective jurors to determine the suitability of individuals to render a fair judgment about the facts of the case. At the commencement of voir dire, the jurors are asked to reveal any facts which may show they have a disqualification (such as hearing loss) or a relationship with one of the parties or witnesses. Some of these facts (such as employment by one of the parties) may amount to an “implied” bias which causes the juror to be excused from service. Other facts (such as having read about the case in the newspapers) may lead to questioning of the juror to establish whether an actual bias exists. A party usually demonstrates that a juror has an actual bias by eliciting views which show the juror has prejudged some element of the case. After any jurors have been removed from the panel for disqualification and bias, the parties may remove jurors without giving any reason, by exercising peremptory challenges.

In general, the number of peremptory challenges available to each side is:

- 20 in capital and life imprisonment cases;
- 10 in criminal cases where the sentence may exceed 90 days in jail;
- 6 in criminal cases with sentences less than one year in jail; or,
- 6 in civil cases.

Prior to passage of the state budget in 2016, misdemeanors were only limited to six peremptory challenges in cases where the defendant faced 90 days or less in county jail. Most misdemeanor offenses were given 10 peremptory challenges.

Peremptory challenges to jurors have been part of the civil law of California since 1851, and were codified in the original Field Codes in 1872. Their previous history in England dates back to at least the Fifteenth Century when persons charged with felonies were entitled to 35 peremptory challenges to members of the jury panel. Peremptory challenges have permeated other nations which have based their systems of justice on English Common Law. Today, nations with roots in English law, such as Australia, New Zealand, and Northern Ireland, continue to utilize peremptory challenges in jury selection.

In 1986, the United States Supreme Court decided *Batson v. Kentucky*, recognizing that the peremptory challenge could be a vehicle for discrimination. Subsequent cases have sought, with some difficulty, to define the limits of inquiry into the motives of the parties in exercise of challenges which might be based on race or gender. In California, under Civil Code Section 231.5, a party may not excuse a juror with a peremptory challenge based on race, color, religion, sex, national origin, sexual orientation or similar grounds. If questioned, the attorney who exercised the potentially discriminatory challenge must provide the court with a lawful and neutral reason for the use of the challenge.

Under the present system, a potential juror may be excused for cause under a number of specified circumstances (generally incompetence, incapacity, and apparent implied or actual bias). One common use of peremptory challenges is to remove potential jurors who meet the legal definition, but who the attorney suspects may be biased or incompetent.

- *Suspected Bias*: In general, many jurors come into the jury selection process with certain biases. Studies have shown that jury bias is particularly prevalent in criminal cases. In fact, this is one of the reasons we have the presumption of innocence.

The jury process is set up to divulge and eliminate these biases through education in basic legal principles such as the presumption of innocence, right against self-incrimination and the burden of proof. Often, jurors begin their jury service with the belief that a defendant must prove his or her innocence. Other jurors may expressly state that they believe that it is incumbent upon the defendant to testify in order to obtain a not guilty verdict. Still others commonly state when questioned that they would vote guilty at the beginning of the case, despite the fact that the defendant is presumed innocent. Upon questioning, if the juror simply states that they can fairly apply the instructions

of the judge they meet the legal standard of unbiased.

- *Suspected Incompetence*: Jurors are expected to have basic competence in order to adequately judge the facts and circumstances of a case. For example, jurors are expected to have a basic understanding of the English language. Minimal ability to understand the language is generally accepted. One potential use of a peremptory challenge would be to remove a juror who can answer and communicate in yes and no responses, but who may not have the ability to read and comprehend the jury instructions. When a case depends on a complex understanding of the jury instructions, a juror who is less literate may not be sufficiently competent to decide the facts of the case. While this juror is not removable for cause, an attorney may choose to exercise a peremptory challenge.
- *Suspected Incapacity*: Jurors are expected to be physically and mentally capable of service. For example, a juror who is so physically infirm that they are unable to sit and comprehend the testimony and courtroom presentation may not be capable of serving on a jury. In instances where the judge determines that the potential juror's health is legally sufficient, an attorney may choose to remove said juror through use of a peremptory challenge. The attorney may feel that the potential juror's infirmity may be so distracting that they could not devote sufficient attention to the determination of the facts of the case.

The types of cases included in this bill are comparatively serious in nature compared to most civil matters. First, unlike civil matters, the prosecution must convince a unanimous jury by the highest legal standard under the law. Second, these cases involve matters which can result in imprisonment for up to one year. If multiple offenses are charged, a defendant could potentially be sentenced to consecutive multi-year stints. In addition to their liberty interests, criminal defendants must also carry a criminal record. Misdemeanors such as vehicular manslaughter, assault, battery, molestation and domestic violence would be covered under this legislation.

Pursuant to the 2016 budget provisions that limited peremptory challenges to six challenges, the Judicial Council was tasked with reporting to the Legislature in 2020. The Judicial Council published their report entitled "Peremptory Challenges in Criminal Misdemeanor Cases" on January 17, 2020.

The report found that the average number of peremptory challenges in criminal misdemeanor cases dropped to 8.4 from a prior average of 11.5. That shows a

modest drop in the number of peremptory challenges that are utilized after the limitation on challenges in misdemeanor cases.

The report also showed a virtually insignificant drop in jury panel sizes from 50.1 jurors to 47.1 per panel.

In terms of court time the report indicated there was no significant change. The in-session time in criminal misdemeanor cases ranged from 2.1 to 5.4 days in study courts prior to the reduction in peremptory challenges. While after the reduction in challenges, the in-session time ranged from 2.5 to 5.4 days. That is actually a slight increase in time. The report pointed to the passage of Proposition 47 in 2014 as the possible reason for the slight increase in court time.

What is not made clear in the report is whether the increase in time may be attributable to prosecutors and defense attorneys having to spend more time to probe jurors that they would have formerly used a peremptory challenge on in order to determine if the juror should be excused for cause.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/18/20)

California Judges Association (source)
Association of African American California Judicial Officers
California Latino Judges Association
Fresno County Superior Court
Judicial Council of California
Orange County Superior Court
San Diego County Office of the District Attorney
San Joaquin County Superior Court
Numerous individual judges

OPPOSITION: (Verified 6/18/20)

California Attorneys for Criminal Justice
California Public Defenders Association

ARGUMENTS IN SUPPORT: According to the California Judges Association:

“SB 843 (Stats. 2016, ch. 33) temporarily reduced the number of peremptory challenges legal counsel may utilize in criminal misdemeanor cases, from 10 to 6, when defendants were tried alone. If defendants are tried together,

additional challenges were reduced from 4 to 2. This provision is set to sunset January 1, 2021.

“Pursuant to SB 843, the Judicial Council conducted a study on the impact of the reduction of peremptory challenges. This report, published in January 2020, made the following findings:

- On average, fewer peremptory challenges were employed.
- Plaintiffs’ counsel averaged 5.2 peremptory challenges per case prior to the passage of SB 843 and 3.9 challenges after its passage. Defendants’ attorneys used an average of 5.7 challenges before SB 843 and 4.0 after its passage.
- Jury panels decreased in size from an average of 50.1 prospective jurors to 47.1.

“By applying these findings statewide, the reduction in the number of jurors sent to the courtroom for voir dire can be inferred to be in the thousands.”

ARGUMENTS IN OPPOSITION: According to the California Public Defenders Association (CPDA):

“The Sixth Amendment guarantees Americans accused of a criminal offense the right to a trial by a fair and impartial jury. To ensure that the jury consists of fair-minded men and women, California law permits the prosecution and defense to ‘challenge’ jurors they believe are unable to fairly and impartially serve.

“Vitality, if a trial judge refuses to dismiss a patently biased juror, the law also grants both sides ten ‘peremptory’ challenges, through which the parties can challenge and remove a biased juror without judicial consent.

“From the defense perspective, this authority is vital because it ensures that a busy or hostile judge cannot simply deny every defense challenge and thereby stack the jury with jurors hostile to the defense.

“SB 1133, however, proposes to reduce the number of peremptory challenges by 40% (from 10 to 6) in the name of ‘judicial efficiency.’ In essence, the theory appears to be that jury trials will ‘go more quickly’ if defendants are not permitted to challenge and remove biased jurors.

“However, the Judicial Counsel’s own recent study of this proposal disagreed, finding that reducing the number of peremptory challenges had a *negative* effect on the rapidity with which criminal trials were completed.

“Even were this not the case, CPDA finds it simply unacceptable to sacrifice the rights of indigent Californians facing significant, lifelong consequences if convicted, all in the name of speed. The goal of a jury trial, after all, is not to do it *quickly* -- it is to do it *right*, and SB 1133’s misguided prioritization of efficiency over accuracy represents a meaningful threat to that goal.”

Prepared by: Gabriel Caswell / PUB. S. /
6/18/20 10:05:58

****** END ******

THIRD READING

Bill No: SB 1138
Author: Wiener (D), et al.
Amended: 3/24/20
Vote: 21

SENATE HOUSING COMMITTEE: 9-1, 5/26/20
AYES: Wiener, Caballero, Durazo, McGuire, Moorlach, Roth, Skinner, Umberg,
Wieckowski
NOES: Morrell
NO VOTE RECORDED: Bates

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Housing element: emergency shelters: rezoning of sites

SOURCE: California Rural Legal Assistance Foundation
Public Interest Law Project
Western Center on Law & Poverty

DIGEST: This bill makes changes to housing element law with regards to where shelters may be zoned, as specified. This bill also requires localities that fail to adopt a legally compliant housing element within 120 days of the statutory deadline, to complete a rezone program within one year instead of the current three-year requirement.

ANALYSIS:

Existing law:

- 1) Requires cities and counties to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policy objectives, financial resources,

and scheduled programs for the preservation, improvement, and development of housing.

- 2) Requires all local governments, except those within the regional jurisdiction of the San Diego Association of Governments (SANDAG), to adopt their housing element no later than 18 months after the date of the adoption of the regional transportation plan. SANDAG must adopt their sixth cycle housing element on or before April 30, 2021.
- 3) Requires that a local government that does not adopt a housing element within 120 days of the statutory deadlines in (2) and (3) above shall revise its housing element not less than every four years until the local government has adopted at least two consecutive revisions by the statutory deadline.
- 4) Requires the housing element to contain an inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level.
- 5) Requires the housing element to contain a program that sets forth a schedule of actions during the planning period that will be taken to make sites available with appropriate zoning and development standards to accommodate that portion of the city's or county's share of the regional housing need for each income level that could not be accommodated on sites identified in the inventory of sites without rezoning.
- 6) Requires that, where the inventory of sites (pursuant to (5) above), does not identify adequate sites to accommodate the need for groups of all household income levels, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than three years after either the date the housing element is adopted or the date that is 90 days after receipt of comments from the state department of Housing and Community Development (HCD), whichever is earlier, unless the deadline is extended, as specified.
- 7) Requires the housing element to contain the identification of a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or discretionary permit. Shelters may be subject to development and management standards that apply to residential and commercial development

within the same zone except that a local government may apply written, objective standards that include all of the following:

- a) The maximum number of beds or persons permitted to be served nightly by the facility.
- b) Off-street parking based upon demonstrated need, provided that the standards do not require more parking for emergency shelters than for other residential or commercial uses within the same zone.
- c) The size and location of exterior and interior onsite waiting and client intake areas.
- d) The provision of onsite management.
- e) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.
- f) The length of stay.
- g) Lighting.
- h) Security during hours that the emergency shelter is in operation.

This bill:

- 1) Requires emergency shelter zones, which are required under existing housing element law to be permitted without a conditional use or other discretionary permit, to be located within zones that allow residential use, including mixed-use areas.
 - a) Provides that, if a zoning district or designation is not possible where residential use is a permitted use, a local government may instead designate emergency shelter zones in a nonresidential zone if the local government demonstrates that the zone is connected to amenities and services that serve people experiencing homelessness.
 - b) Defines “connected to amenities and services” as including but not limited to, offering free transportation to services or offering services onsite. Shelters shall include other interim interventions, including but not limited to, navigation centers, bridge housing, and respite or recuperative care.
- 2) Requires that shelters only be subject to the following written and objective standards:
 - a) The maximum number of beds or persons permitted to be served nightly by the facility.

- b) Sufficient parking to accommodate all staff working in the emergency shelter, provided that the standards do not require more parking for emergency shelters than other residential or commercial uses within the same zone.
 - c) The size and location of exterior and interior onsite waiting and client intake areas.
 - d) The provision of onsite management.
 - e) The proximity to other emergency shelters, provided that emergency shelters are not required to be more than 300 feet apart.
 - f) The length of stay.
 - g) Lighting.
 - h) Security during hours that the emergency shelter is in operation.
- 3) Requires that, if a local government applies the written, objective standards in (2) above, the local government shall attach and analyze the standards in its housing element.
- 4) Specifies that a zone or zones where emergency shelters are permitted without a conditional use or other discretionary permit shall include sites that meet at least one of the following standards:
- a) Vacant sites zoned for residential use.
 - b) Vacant sites zoned for nonresidential use that allows residential development. Vacant sites in a nonresidential zoning designation may be included if the local government can demonstrate how the zone is connected to amenities and services that serve people experiencing homelessness.
 - c) A nonvacant site, provided that a description is provided regarding the current use of each property at the time it is identified and an analysis is provided indicating how the site is adequate and available for use as a shelter in the current planning period, while meeting all of the state and local health, safety, habitability, and building requirements necessary for any other residential development. If a nonvacant site is identified, the analysis required by this clause shall indicate the current existing use of the site and what factors indicate that the existing use will be terminated during the planning period.
- 5) Provides that, the number of people experiencing homelessness that can be accommodated on each identified site shall be demonstrated by calculating a minimum 200 square feet per person.

- 6) Provides that for the sixth housing element cycle and beyond, if a local government has not adopted a housing element that HCD deems substantially compliant with state law within 120 days of the applicable statutory deadline, it shall be required to complete its rezoning program within one year, instead of three.

Comments

- 1) *Author's statement.* According to the author, "Our growing homelessness crisis is a diverse problem, but one glaring aspect is the number of unsheltered homeless in our state – that is, folks who are literally living on the streets. Of the 150,000 homeless people living in California, 72% are unsheltered. While some California localities provide a sufficient number of shelter beds, in others, there are either no shelter beds or only a small number, only seasonally available shelter, or no shelters specific to youth. SB 1138 expands shelter access and complements California's ultimate priority: to transition people experiencing homelessness into permanent housing. SB 1138 also clarifies that local governments must adopt a legally compliant housing element by the statutory deadline or face a penalty (completing a rezone program in one year rather than three). This critical incentive recognizes that adequate planning for housing is necessary to the successful approval and construction of desperately needed housing at all income levels."
- 2) *Inadequate housing and shelter for California's homeless.* Homelessness in California is no longer confined to urban corridors; it pervades both urban and rural communities across the state and puts stress on local resources, from emergency rooms to mental health and social services programs to jails. The homelessness crisis is driven in part by the lack of affordable rental housing for lower income people. In the current market, 2.2 million extremely low-income and very low-income renter households are competing for 664,000 affordable rental units. Of the 6 million renter households in the state, 1.7 million are paying more than 50% of their income towards rent. The National Low Income Housing Coalition estimates that the state needs an additional 1.5 million housing units affordable to very-low income Californians.
- 3) *Housing elements and approvals generally.* Every city and county in California is required to develop a general plan that outlines the community's vision of future development through a series of policy statements and goals. General plans are comprised of several elements that address various land use topics. Each community's general plan must include a housing element, which outlines

a long-term plan for meeting the community's existing and projected housing needs. The housing element demonstrates how the community plans to accommodate its "fair share" of its region's housing needs. To do so, each community establishes an inventory of sites designated for new housing that is sufficient to accommodate its fair share. State law requires cities and counties to update their housing elements every five or eight years.

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially or without further approval from elected officials. Projects reviewed ministerially, or by-right, require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meet standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review. Instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under the California Environmental Quality Act (CEQA), while projects permitted ministerially generally are not.

- 4) *By-right for shelters in the housing element.* SB 2 (Cedillo, Chapter 633, Statutes of 2007) requires a local government, in its housing element, to accommodate its need for emergency shelters on sites by right, or ministerially and without a conditional use permit, and requires cities and counties to treat transitional and supportive housing projects as a residential use of property. Local governments must treat supportive housing the same as other multifamily residential housing for zoning purposes, and may only apply the same restrictions as multifamily housing in the same zone to supportive housing. Current law is silent as to where these shelters may be located, and as a result, local governments often identify shelters in industrial areas far from services designed to move people experiencing homelessness from the streets and into permanent housing. Additionally, current law does not require a local government to identify zones with sufficient capacity to accommodate emergency shelters. As a result, some emergency shelter zones are not actually capable of accommodating a shelter on any of the identified sites.

This bill clarifies housing element law with regards to where by-right zones for emergency shelters may be identified. Current law is not clear as to the types of standards that a jurisdiction may apply to a shelter project in an identified by right zone. This bill makes it clear that a local government shall only be subject to those development and management standards that apply to residential or commercial development within the same zone, except that a local government may apply the specified objective standards. Additionally, this bill requires local governments to identify by-right shelters in zones that allow residential uses, including mixed-use. A local government may identify zones in industrial areas, but only if it demonstrates how the zone is appropriate and connected to necessary amenities and services. Lastly, this bill requires that an emergency shelter zone must include vacant sites or sites that are adequate for a shelter.

- 5) *Timely approval of compliant housing elements.* Housing element law requires a locality to adopt a housing element within 120 days of the statutory deadline; if it fails to do so, it must revise its housing element every four years (rather than eight) until the jurisdiction has adopted at least two consecutive revisions. It is critical that local jurisdictions adopt legally compliant housing elements on time in order to meet statewide housing goals and create the environment locally for the successful construction of desperately needed housing at all income levels. Unless communities plan for production and preservation of affordable housing, new housing will not be built. Adequate zoning, removal of regulatory barriers, protection of existing stock and targeting of resources are essential to obtaining a sufficient permanent supply of housing affordable to all economic segments of the community. Although not requiring the community to develop the housing, housing element law requires the community to plan for housing. Recognizing that local governments may lack adequate resources to house all those in need, the law nevertheless mandates that the community do all that it can and that it not engage in exclusionary zoning practices.

Some jurisdictions, however, do not meet the existing deadline to adopt a legally compliant housing element, or instead adopt a draft housing element (rather than one that is legally compliant) to avoid having to revise within four years. This bill clarifies that moving forward (starting with the 6th housing element cycle), jurisdictions must adopt a legally compliant housing element within 120 days of the statutory deadline. Failure to do so will result in a need to complete a rezone program within one year instead of the current three-year requirement. The goal is to clarify and incentivize locals to meet the existing requirements.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- HCD estimates it would incur costs of approximately \$101,000 in the first year and \$95,000 annually thereafter for 0.5 PY of staff time to update guidance on the Housing Element Law and provide technical assistance and outreach to local governments. (General Fund)
- Unknown local costs related to the preparation of housing elements to account for the new requirements related to the zoning of emergency shelters. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates. (local funds)

SUPPORT: (Verified 6/18/20)

California Rural Legal Assistance Foundation (co-source)

Public Interest Law Project (co-source)

Western Center on Law & Poverty (co-source)

California Coalition for Youth

TODGO

1 Individual

OPPOSITION: (Verified 6/18/20)

None received

Prepared by: Alison Hughes / HOUSING / (916) 651-4124
6/19/20 17:00:00

**** END ****

THIRD READING

Bill No: SB 1141
Author: Rubio (D), et al.
Amended: 5/29/20
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-0, 5/22/20
AYES: Jackson, Durazo, Lena Gonzalez, Jones, Monning, Stern, Umberg,
Wieckowski
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Domestic violence: coercive control

SOURCE: Los Angeles City Attorney's Office

DIGEST: This bill specifies that intimate partner “coercive control” is a form of domestic violence for purposes of domestic violence restraining orders, the statutory presumption against child custody for perpetrators of domestic abuse, and the admissibility of evidence pertaining to domestic violence in specified criminal proceedings.

ANALYSIS:

Existing law:

- 1) Establishes the Domestic Violence Protection Act ([DVPA] Fam. Code § 6200 et seq.¹), which sets forth procedural and substantive requirements for the issuance of a protective order to enjoin, among other things, specified acts of abuse (§§ 6318; 6320).

¹ All further statutory references are to the Family Code, unless otherwise specified.

- 2) Defines “domestic violence” as abuse perpetrated against a spouse, cohabitant, a person the abuser dates, a person who has a child with the abuser, a child, and immediate relatives. (§ 6211.)
- 3) Defines “abuse” as any of the following:
 - a) Intentionally or recklessly causing or attempting to cause bodily injury.
 - b) Sexual assault.
 - c) Placing a person in reasonable apprehension of imminent serious bodily injury to that person or to another.
 - d) Engaging in enumerated harmful behaviors, including disturbing the peace of the other party. (§§ 6203(a); 6320.)
- 4) Provides that “abuse” is not limited to the actual infliction of physical injury or assault. (§ 6203(b).)
- 5) Requires courts to consider a person’s history of inflicting abuse in making awards of child custody and visitation. (§§ 3011(a)(2)(A), 3030(c)(2) & 3044(d)(1).)
- 6) Provides, in a criminal action, for the admissibility of expert testimony regarding intimate partner battering and its effects, including the nature and effect of physical, emotional, or mental abuse on the beliefs, perceptions or behavior of victims of domestic violence, except as specified. (Evid. Code § 1107(a).) Incorporates the definitions of “abuse” and “domestic violence” from the Family Code. (*Id.* at (c).)
- 7) Provides, in a criminal action in which the defendant is accused of an offense involving domestic violence, for the admissibility of evidence of the defendant’s commission of other domestic violence, with specified exceptions. (Evid. Code § 1109(a).) Incorporates the definition of “domestic violence” from the Family Code. (*Id.* at (d)(3).)
- 8) Provides that an intentional violation of a domestic violence restraining order is a misdemeanor punishable by a fine of not more than \$1,000, or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. (Pen. Code § 273.6.)

This bill:

- 1) Finds and declares that:
 - a) Coercive control is a form of abuse rooted in societal inequality and replicated with devastating effects in intimate partner relationships when one partner's autonomy is subordinated to the will of the other partner.
 - b) Coercive control deprives victims of their personal liberty through a pattern of behavior that does not always include physical violence but that still causes lasting harm to a victim.
 - c) This bill is intended to provide redress for the harm of coercive control in intimate partner relationships by giving a name to the specific liberty deprivations inherent in coercively controlling behavior.
 - d) This bill is not intended to override the findings and declarations, as stated in the DVPA.
 - e) In restricting the application of coercive control to a specified category of victims, this bill is not meant to limit or alter existing protections afforded by the DVPA.
- 2) Amends the definition of "abuse" under Section 6203 to include "coercive control," thereby altering the operation of the existing statutes described in 5) through 8), above, governing the issuance of domestic violence restraining orders and punishment for the violation thereof, child custody and visitation orders, and the admissibility of certain evidence pertaining to domestic violence in specified criminal proceedings.
- 3) Provides that a person's conduct constitutes coercive control if the person intentionally, or with reckless disregard of the consequences, engages in a pattern of behavior that interferes with the will of the victim with the intent to cause the victim severe emotional distress or that a reasonable person would know would be likely to cause the victim severe emotional distress, the victim does suffer severe emotional distress, and the person's conduct is not reasonable under the circumstances.
- 4) Lists types of conduct that may constitute coercive control if 3), above, is satisfied.

- 5) Provides that coercive control may be committed directly, indirectly, or through the use of third parties, and by means of any instrumentality, including, but not limited to, electronic communication devices.
- 6) Limits “coercive control” to a victim with whom he person has or has had a sexual, dating, or spousal relationship.
- 7) Clarifies that it does not limit any remedy available to any person under the DVPA or any other provision of law.

Background

1) Elaborates on Existing Domestic Violence Laws that Apply to Psychological Abuse

The DVPA seeks to prevent acts of domestic violence, abuse, and sexual abuse, and to provide for a separation of persons involved in domestic violence for a period sufficient to enable them to seek a resolution. The DVPA’s “protective purpose is broad both in its stated intent and its breadth of persons protected.” (Caldwell v. Coppola (1990) 219 Cal.App.3d 859, 863.) The DVPA must be broadly construed in order to accomplish the statute’s purpose. (In re Marriage of Nadkarni (2009) 173 Cal.App.4th 1483, 1498 [Nadikarni].) The Act enables a party to seek a “protective order,” also known as a restraining order, which may be issued to protect a petitioner who presents “reasonable proof of a past act or acts of abuse.” (§ 6300; see § 6218.)

“Abuse” for these purposes is broadly defined in terms of specified physical harms, but is not limited to actual infliction of physical injury or assault. (§ 6203(a) & (b).) “Abuse” also encompasses a broad range of enumerated harmful behaviors under Section 6320, including threats, stalking, annoying phone calls, vandalism, and, most relevant to this bill, “disturbing the peace of the other party.” (Id. at (a).) “[T]he plain meaning of the phrase ‘disturbing the peace of the other party’ in section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party.” (N.T. v. H.T. (2019) 34 Cal. App. 5th 595, 602.) Thus, courts have concluded that “abuse” within the meaning of the DVPA includes certain forms of mental abuse. (Nadikarni, *supra*, 173 Cal.App.4th at p. 1499 [accessing and disclosing a person’s private emails]; Burquet v. Brumbaugh (2014) 223 Cal.App.4th 1140 [continuing to contact a person electronically and in person despite their request to stop]; In re Marriage of Evilsizor & Sweeney (2015) 237 Cal.App.4th 1416 [downloading and disseminating text messages].)

Rodriguez v. Menjivar (2015) 243 Cal. App. 4th 816 presents a stark example of the type of harmful conduct that would be covered by this bill. In addition to physically abusing the victim, Menjivar took actions to intimidate, isolate, and control her. He would call her throughout the day, enrolled in her college courses to monitor her, practiced martial arts in close proximity to her despite her requests to stop, wielded a knife in her face, threatened to beat her with a studded belt, took her phone away when she tried to call a relative, threatened to send her to jail, threatened to kill himself, and threatened her over social media, causing her to shut down her social media accounts and withdraw from her college classes. (Id. at 818–819.) The court, reviewing the precedents described above, concluded that, for purposes of section 6320, “[t]he acts of isolation, control, and threats were sufficient to demonstrate the destruction of Rodriguez’s mental and emotional calm.” (Id. at 822.)

Thus, the existing scheme governing domestic violence already encompasses mental abuse, and judicial precedents have held that this includes conduct that amounts to coercive control. This bill affirms and builds upon these precedents by setting forth criteria for identifying coercive control.

2) *Parameters to Limit this Bill’s Application to Clearly Abusive Behaviors*

A protective order implicates fundamental liberty rights, as a violation of its provisions is a crime (Penal Code § 273.6), and it is a factor that is weighed in child custody and visitation determinations (see §§ 3011, 3030, 3044.). Indeed, this bill specifically amends Section 3044, which establishes a rebuttable presumption against an award of child custody to a perpetrator of domestic violence, to expressly include coercive control as an example of domestic violence. Additionally, the Family Code definition of abuse informs the scope of admissible evidence in certain criminal proceedings, including expert testimony regarding the effects of intimate partner battering (Evid. Code § 1107(a), (c)), and evidence of a defendant’s commission of a domestic violence crime (Evid. Code § 1109(a), (c)). Thus, while it is essential to constrain the full spectrum of abusive conduct, any expansion of the scope of these provisions must be undertaken cautiously to limit the potential for unintended consequences.

Crucially, this bill establishes narrow parameters to limit the application of its provisions to clearly abusive behaviors. This bill provides that a person’s conduct constitutes coercive control only if all of the following are satisfied:

- The person intentionally, or with reckless disregard of the consequences, engages in a pattern of behavior that interferes with the will of the victim;

- The person intends to cause the victim severe emotional distress, or a reasonable person would know that the conduct would be likely to cause the victim severe emotional distress;
- The victim does suffer severe emotional distress; and
- The person’s conduct is not reasonable under the circumstances.²

These parameters—a mental state, objective unreasonableness, causation, foreseeable harm, actual harm—are the types of elements commonly used in definitions governing torts, such as intentional infliction of emotional distress, and criminal provisions. These elements provide strong guardrails to help ensure that this bill will function as intended and not reach benign conduct that is ordinarily tolerated in relationships or that does not truly distress the person. Additionally, the requirement that the conduct be unreasonable under the circumstances helps to ensure that this bill will not be used against a victim who takes reasonable coercive actions to defend themselves against an abuser or to interfere with otherwise harmful behavior.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Courts: Unknown, potentially-significant workload cost pressures to the courts to adjudicate charges brought against defendants who are charged with contempt of court for violating restraining orders that were issued based on the grounds of coercive control. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the proposed 2020-21 Budget would appropriate \$35.2 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

² Other countries and states have adopted legislation aimed at limiting or punishing coercive control. Michigan defines abuse as “any other specific act or conduct that imposes on or interferes with personal liberty or that causes a reasonable apprehension of violence.” (Mich. Comp. Laws § 600.2950(13).) Maine’s definition of abuse includes “compelling a person by force, threat of force or intimidation to engage in conduct from which the person has a right or privilege to abstain or to abstain from conduct in which the person has a right to engage.” (Me. Rev. Stat. Ann. tit. 19-A § 4002.) Colorado defines abuse to include “financial control, document control, and other types of control that make a victim more likely to return to an abuser due to fear of retaliation or inability to meet basic needs.” (Colo. Rev. Stat. Ann. § 13-14-101.) Hawaii provides relief for “extreme psychological abuse,” which is defined as an “intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual and that serves no legitimate purpose; provided that such a course of conduct would cause a reasonable person to suffer extreme emotional distress.” (Haw. Rev. Stat. Ann. § 13-14-101.)

- Prosecution & incarceration: Unknown potential increase in non-reimbursable local enforcement and incarceration costs to prosecute and incarcerate those charged with and found guilty of violating a restraining order. Costs would be offset, to a degree, by fee and assessment revenue. (Local funds)

*Trial Court Trust Fund

SUPPORT: (Verified 6/19/20)

Los Angeles City Attorney's Office (source)
Crime Victims United of California
Elizabeth House
FreeFrom
Jenesse Center, Inc.
Pathways for Victims of Domestic Violence
Peace Over Violence
Project: PeaceMakers, Inc.
StrengthUnited
YWCA of San Gabriel Valley

OPPOSITION: (Verified 6/19/20)

California Association of Certified Family Law Specialists
California Public Defenders Association
Family Violence Appellate Project

ARGUMENTS IN SUPPORT: The author writes:

Coercive control refers to the pattern of harm used to isolate and dominate victims in intimate partner relationships. For decades, academics and advocates have included coercive control in their definitions of intimate partner violence, but laws on domestic violence have predominantly focused on discrete instances of physical assault to the exclusion of tactics of coercive control. Such tactics include deprivation of basic necessities, economic abuse, and control over daily activities that combine to reduce a victim's autonomy, resulting in severe emotional distress. This bill improves California's domestic violence laws by bringing a range of coercive behaviors under a single statutory framework situated in the Family Code, with associated benefits in criminal proceedings.

A coalition of organizations that work with survivors of domestic abuse writes:

For decades, academics and advocates have included coercive control in their definitions of intimate partner violence. However, California does not include a comprehensive definition of “coercive control” in any existing statute. Coercive control refers to the pattern of harm used to isolate and dominate victims in intimate partner relationships.

Empirical studies have shown psychological intimate partner violence is equally as damaging to women’s health as physical abuse. In 2015, the Center for Disease Control Violence Prevention Division found that partner control over the victim’s daily activities within intimate relationships could more than quintuple the odds of homicide.

The constant manipulation and surveillance, the gradual isolation away from family and friends, the limitations placed by the perpetrator on financial and economic resources, are all considered coercively controlling behaviors, making it nearly impossible for the survivors to escape abuse. The Center for Disease Control’s Division of Violence Prevention conducted a study in 2015 and found approximately 43.5 million women in the U.S. reported experiencing psychological aggression by an intimate partner during their lifetime.

ARGUMENTS IN OPPOSITION: This bill has elicited a range of concerns from stakeholders, with some arguing that it does not go far enough, others arguing that it could cause confusion or backfire, and still others arguing that it goes too far. To assuage some of these concerns, the author amended this bill in the Senate Judiciary Committee to clarify its scope and reiterate that this bill does not limit any remedy available to any person under the DVPA or any other provision of law.

Some organizations that assist survivors of domestic violence organizations and that are generally supportive of this bill’s concept have argued that this bill should not be limited to intimate partners. Some organizations also argue that limiting this bill’s application to unreasonable, intentional, or reckless conduct is insufficient to protect victims of coercive control. Family Violence Appellate Project, in opposition, argues that such provisions are not just insufficient, but could cause confusion or provoke a backlash from courts, resulting in diminished protections for victims. However, as noted above, this bill expressly clarifies that it does not limit remedies available under existing law.

The California Association of Certified Family Law Specialists opposes this bill based on concerns over its breadth and clarity, urging that it instead be amended simply to add to the definition of abuse in section 6203 the following: “To engage

in a pattern of coercive control that is unreasonable under the totality of the circumstances after considering the reasons for the behavior.” This approach is straightforward, but offers scant guidance to courts.

Finally, the California Public Defenders Association argues, in opposition, that this bill is overly broad and should be narrowed to intentional conduct instead of including instances in which the person recklessly disregards the consequences of their behavior.³ However, omitting from this bill’s scope reckless conduct that is unreasonable and results in severe emotional distress could let abusers off the hook if they claim that they were not deliberately trying to harm the victim. This would exacerbate the concerns of otherwise supportive organizations who argue that this bill should be more expansive.

Prepared by: Josh Tosney / JUD. / (916) 651-4113
6/19/20 17:00:01

****** END ******

³ The existing definition of “abuse” under section 6203 provides that attempts to cause “bodily injury” are limited to those that are done “intentionally or recklessly.” That section, along with section 6320, does not apply a mental state requirement for the other enumerated forms of abuse, meaning that existing law generally operates by strict liability and looks only to the effect on the victim.

THIRD READING

Bill No: SB 1173
Author: Durazo (D)
Amended: 6/2/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 3-2, 5/14/20
AYES: Jackson, Mitchell, Pan
NOES: Hill, Morrell

SENATE APPROPRIATIONS COMMITTEE: 4-3, 6/18/20
AYES: Portantino, Bradford, Leyva, Wieckowski
NOES: Bates, Hill, Jones

SUBJECT: Public employment: labor relations: employee information

SOURCE: California Labor Federation, AFL-CIO
California School Employees Association

DIGEST: This bill requires the Public Employment Relations Board (PERB) to levy a penalty of up to \$50,000 against public employers to enforce a union's right to specified employee contact information and also requires PERB to award the prevailing union its attorney's fees and costs, as specified.

ANALYSIS: Existing law requires public employers subject to specified collective bargaining statutes to disclose to public employee unions specified employee contact information including 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. Existing law also requires public employers to provide this information for all employees in a bargaining unit at least every 120 days, except as specified (AB 119, Assembly Budget Committee, Chapter 21, Statutes of 2017; Government Code (GC) Section 3558).

This bill:

- 1) Authorizes a union, after providing notice as specified, to file an unfair practice charge with PERB alleging that a public employer violated GC 3558's employee information disclosure requirements. Although the union can file such an unfair practice charge under existing law, this bill authorizes an expedited PERB review process; requires PERB to assess a penalty of up to \$50,000 against the employer if PERB finds that the employer violated the union's right to receive the employee information; and requires PERB to award the union its attorney's fees and costs accruing from the initiation of proceedings to final disposition, as specified.
- 2) Requires PERB to base the penalty amount on the public employer's annual budget, the severity of the violation, and the public employer's history of violating the disclosure requirements. The employer shall pay the penalty to PERB upon appropriation by the Legislature.
- 3) Provides employers 10 calendar days to cure limited violations (i.e., only for violations where the employer provides an inaccurate or incomplete list of employees. The cure provision does not apply to any other alleged violation of GC 3558. For example, it would not apply to an employer that fails to submit a list at all of newly hired employees or a list of bargaining unit members within specified timelines).
- 4) Limits a public employer from availing itself of the cure provision to no more than three times in any 12-month period.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, PERB indicates that it would incur General Fund first-year costs of \$186,000, and \$101,000 annually thereafter, to implement the provisions of the bill.

SUPPORT: (Verified 6/18/20)

California Labor Federation, AFL-CIO (co-source)
California School Employees Association (co-source)
California Conference Board of the Amalgamated Transit Union
California Conference of Machinists
California Federation of Teachers
California Nurses Association
California Professional Firefighters Association
California State Council of Service Employees International Union

California Teamsters Public Affairs Council
Communication Workers of America, District 9
Professional and Technical Engineers, IFPTE Local 21, AFL-CIO
UAW Local 2865
United Domestic Workers/AFSCME Local 3930
United Public Employees

OPPOSITION: (Verified 6/18/20)

Association of California Health Care Districts
California Association of Joint Powers Authorities
California Special Districts Association
California State Association of Counties
City of Burbank
CSAC Excess Insurance Authority
League of California Cities
Rural County Representatives of California
Urban Counties of California

ARGUMENTS IN SUPPORT: According to the California Labor Federation, AFL-CIO:

In order for unions to meet their obligations to public employees, they must have access to timely and accurate information. That is why in 2017 AB 119 was signed into law, which guarantees public employee organizations access to specific information for new-hires within 30 days of the hire date and specific bargaining unit data at least every 120 days.

However, some public employers still choose to ignore these reporting requirements. With workers displaced by wildfires, working from home due to “shelter in place” orders, or in some instances working at alternate or changing worksites to help in the state’s response to COVID-19, unions’ access to the required employee data is crucial.

SB 1173 establishes accountability measures, with employer cure periods, to help ensure public employers are properly adhering to the information requirements in current law. Accurate, up-to-date bargaining unit information is essential for unions to fulfill their legal representational duties to public employees, particularly during emergencies.

ARGUMENTS IN OPPOSITION: A coalition including the League of California Cities and the California State Association of Counties argues in opposition that:

Creating new financial damages to be paid to the Public Employment Relations Board by public agencies that fail to comply with a mostly bureaucratic task will only increase compliance and litigation costs in public agency budgets and divert those funds away from public benefit. It simply does not make sense why one public agency should have to pay another public agency under these circumstances. We would oppose this type of re-direction of important public funds in good times, and we certainly object during the current pandemic, economic insecurity, and public agency budget instability. In addition, allowing unions to recover attorney's fees for bringing such claims will only encourage unions to threaten to bring lawsuits rather than encourage them to work cooperatively with public agencies. Unfortunately, in this scenario, attorneys make money to the detriment of the general public.

Prepared by: Glenn Miles / L., P.E. & R. / (916) 651-1556
6/19/20 17:00:02

****** END ******

THIRD READING

Bill No: SB 1185
Author: Moorlach (R)
Amended: 5/26/20
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 5/29/20
AYES: Allen, Hertzberg, Hill, McGuire, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Emergency backup generators: emergency variance: operation during deenergization events

SOURCE: Author

DIGEST: This bill requires a facility permittee, when applying for an emergency variance from backup generator runtime rules, to demonstrate that they are using the cleanest, feasible, available backup power source, including, but not limited to, natural gas-powered generators; and requires reporting from utility providers to local and state air regulators.

ANALYSIS: Existing federal law sets, through the Federal Clean Air Act (FCAA) and its implementing regulations, National Ambient Air Quality Standards (NAAQS) for six criteria pollutants and requires states to prepare, submit, and adopt a State Implementation Plan (SIP) to limit air pollution and attain federal standards. (42 U.S.C. §7401 et seq.)

Existing state law:

- 1) Establishes the Air Resources Board (ARB) as the air pollution control agency in California and requires ARB, among other things, to coordinate, encourage, and review the efforts of all levels of government as they affect air quality. (Health and Safety Code (HSC) §39500 et seq.)

- 2) Creates the 35 air pollution control and air quality management districts (air districts) to be responsible for regional air quality planning, monitoring, and stationary source and facility permitting. (HSC §40000 et seq.)
- 3) Defines “emergency use” as providing electrical power during specified events, including the loss of normal electrical power for reasons beyond the control of the operator. (Title 17 of the California Code of Regulations §93115.4)
- 4) Allows any person to apply to an air district’s hearing board for a variance from the district’s rules, regulations, and orders (HSC §42350 et seq.), and makes specifications for the issuance of that variance, including:
 - a) That no variance shall be granted unless it is found that compliance would otherwise result in either an arbitrary or unreasonable taking of property, or the practical closing and elimination of a lawful business.
 - b) Requiring a hearing board to (when the petitioner is a public agency) consider whether immediate compliance would otherwise impose an unreasonable burden on an “essential public service”—specifically, a prison, detention facility, police or firefighting facility, school, health care facility, landfill gas control or processing facility, sewage treatment works, or water delivery operation, if owned and operated by a public agency.
- 5) Requires an air district’s hearing board, except in the case of an emergency, to hold a hearing to determine under what conditions and to what extent a variance shall be granted. (HSC §42359)
- 6) Allows for the issuance of emergency variances by the chairman or any other member of a district hearing board (without notice and hearing), provided that the emergency variance be issued for a good cause and not remain in effect for longer than 30 days. (HSC §42359.5)

This bill:

- 1) Requires a facility permittee, when applying for an emergency variance from backup generator (BUG) runtime rules, to demonstrate that they are using the cleanest, feasible, available backup power source, including but not limited to natural gas-powered generators.
- 2) Requires electric utilities (whether a corporation, cooperative, or publically owned entity) to report annually to affected air districts and ARB on the area and duration of any Public Safety Power Shutoff (PSPS) events they utilized.

Background

- 1) *Public safety power shutoffs.* California's wildfires have become more frequent, threatened more residents, and happened throughout more of the year in recent decades. More than 25 million acres of California wildlands are classified as under very high or extreme fire threat. Roughly a quarter of the state's residents live in this area. Climate change has exacerbated the hot, dry conditions that support catastrophic fires, and while California attempts to mitigate its contributions to global climate change, the state is also taking immediate actions to protect its residents from wildfires.

To better protect safety and public health from uncontrolled wildfires, utility providers have adopted the use of PSPS events. Electricity transmission and distribution systems have sparked a number of wildfires, and this risk can be reduced by de-energizing the power lines during extreme weather events. During October of 2019, California utility providers conducted a dozen PSPS events. These affected millions of residents across 30 counties. While being an important public safety tool, power loss also has many negative impacts, especially to vulnerable populations (including residential customers that rely on reliable electric service to power life-saving medical devices), medical and emergency service providers (including hospitals, fire departments and police stations), and important public service providers (such as water agencies, gas stations, and grocery stores).

- 2) *Backup generators.* In order to mitigate the damage of power loss, many of these critical service providers may rely on BUGs to replace lost grid power. Additionally, many businesses may use BUGs to avoid catastrophic system disruptions and to minimize economic disruption that could result from prolonged power outages. However, this use of BUGs may result in air quality and public health impacts.

According to estimates from ARB, nearly 125,000 BUGs were used in California during PSPS events in October 2019. Assuming an average of 50 hours of operation each, those generators released a cumulative total of 166.4 tons of nitrogen oxides (NO_x), 19.4 tons of particulate matter (PM), and 8.9 tons of diesel PM. The diesel PM release was roughly equivalent to 29,000 additional heavy-duty diesel trucks being used for the month.

- 3) *Natural gas versus diesel generators.* The emissions from a natural gas powered internal combustion engine do still emit some air pollutants and greenhouse gases. However, they lack the acute health impacts of diesel

particular matter, which is a known carcinogen (among other negative health impacts). Neither type of generator burns purely renewable fuel. However, at this time, the upfront costs for renewable-and-storage backup power are beyond the reach of many facilities that may rely on backup power during a PSPS.

Renewable-and-storage notwithstanding, natural gas powered BUGs are preferable to diesel powered BUGs from an environmental perspective. ARB's guidance document on PSPS back-up power includes natural gas fueled engines as technologies that would improve emissions from BUG use statewide as compared to diesel- and gasoline-powered engines.

- 4) *Air district permitting rules.* Each of the state's 35 air districts adopts their own sets of regulations and rules tailored to the sources and air quality challenges of its region and are overseen by ARB. Ultimately, these actions are designed to achieve NAAQS set by the FCAA. Collectively, these strategies (i.e. emission standards, fuel regulations, emission limits, etc.) are included in the SIP. ARB is the lead agency in California for achieving the emission reductions goals and timelines described in the SIP. The 35 air districts, as well as other agencies, prepare SIP elements to be reviewed and approved by ARB before being integrated into the SIP.

With few exceptions, anyone constructing or operating a facility that emits air pollutants must obtain an appropriate permit from the local air district. Each air district establishes its own fee schedule, and may maintain different requirements. An air district uses these permits to assess the air pollution impacts of stationary sources within its jurisdiction, and it may require additional standards or control technologies be used to align permitted entities' emissions with the SIP.

- 5) *Air district rules during emergencies.* Air districts provide for administrative exemption from established rules and regulations through the variance process. If a permitted facility anticipates they will need to exceed their authorized emissions due to reasons outside their control, they may submit a request for a variance to the board of the air district, who will hear and vote on the request at a public meeting. Should an interruption arise without time for the normal variance and hearing process, there is also an established emergency variance process. When an emergency variance is requested, it can be granted by the chair of the air district board (or a designee) without the board convening.

Comments

- 1) *Purpose of bill.* According to the author, “In recent years, California has faced wildfires of catastrophic proportion. As a response to increased liability for wildfires and as a precautionary measure, California utility providers have begun the practice of shutting off electrical service in certain areas during peak wildfire risk times to mitigate the potential for a utility line to spark a wildfire.

“Many facilities rely on back-up generators during PSPS events to remain powered and functional. Natural gas service remains in place and functional during these events and is cleaner and more feasible than traditional diesel generation. In many cases, PSPS events have qualified as cause for an emergency variance to a back-up generator permit. However, without clear statute regarding the issuance of emergency variance permits during PSPS events, many critical facilities have expressed fear of hefty fines and compliance issues when utilizing back-up generators.

“Senate Bill 1185 clarifies existing statute to ensure that operators of back-up generators can apply for an emergency variance to their permit during a public safety power shut-off (PSPS) event while also encouraging the use of natural-gas-backup generation where applicable.

“When back-up generation occurs, it is far more favorable to utilize natural gas infrastructure, as opposed to bringing in and storing large amounts of diesel fuel—presenting a serious safety concern and elevating the risk for disaster. In addition, natural gas generation releases significantly less pollutants than diesel generation. However, natural gas generation is not always available, and as such, this bill provides flexibility for emergency variances for other sources of generation.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 6/15/20)

California Cable & Telecommunications Association
San Diego County Water Authority
Southern California Gas Company
Utility Workers Union of America

OPPOSITION: (Verified 6/9/20)

Association of California Water Agencies
Sierra Club

ARGUMENTS IN SUPPORT: According to the San Diego County Water Authority, “Without proper regulatory, statutory, and administrative structure, the increased frequency of PSPS events could have significant impacts on critical facilities including water and wastewater treatment agencies. Some of these consequences include the inability to pump water, inadequate fire flows, sewage backups, and air conditioning shutoffs in facilities with temperature-sensitive equipment. If water agencies cannot access reliable electricity, communities could face a public health crisis if they lack safe drinking water for consumption, cooking, and sanitation.

“To mitigate these effects and ensure reliable electricity during a PSPS event or other catastrophic loss of power like a wildfire, many critical facilities, including water agencies, must depend on their onsite emergency generators. However, state and local air quality management district restrictions for some existing generators adopted prior to the widespread use of PSPS do not provide enough time for proper testing in advance of an event or enough run time during an event.”

ARGUMENTS IN OPPOSITION: According to the Association of California Water Agencies (ACWA), “Although this bill is well intended, the current version of the bill may have unintended consequences. Under existing law, any permittee can apply for an emergency variance from their local air district; under the provisions of this bill it could be interpreted that only natural gas powered generators should qualify for an emergency variance for a PSPS event. While ACWA supports the intent of the bill, the current version could be detrimental to the efforts of critical service providers to ensure continued service to the public during PSPS events.

“ACWA appreciates the author’s sincere commitment to have ongoing discussions to clarify the bill and ensure that it will help critical services providers. For these reasons, ACWA must regrettably oppose SB 1185 until it is amended.”

Prepared by: Eric Walters / E.Q. / (916) 651-4108
6/15/20 11:41:55

**** END ****

THIRD READING

Bill No: SB 1190
Author: Durazo (D), et al.
Amended: 5/29/20
Vote: 21

SENATE JUDICIARY COMMITTEE: 5-1, 5/22/20
AYES: Jackson, Durazo, Lena Gonzalez, Monning, Wieckowski
NOES: Jones
NO VOTE RECORDED: Borgeas, Stern, Umberg

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Tenancy: termination

SOURCE: Californians for Safety and Justice

DIGEST: This bill extends existing provisions of law authorizing a tenant to terminate a tenancy when the tenant or a household member is a victim of domestic violence, sexual assault, stalking, human trafficking, or elder and dependent adult abuse to also include a crime that caused bodily injury or death, the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or that included the use of force or threat of force against the victim, and expands these provisions to apply if an immediate family member of the tenant is a victim of an eligible crime. This bill also authorizes a city attorney, district attorney, or county counsel to bring suit to enjoin and remedy violations of the Tenant Protection Act of 2019 (AB 1482, Chiu, Chapter 597, Statutes of 2019; hereafter the Act), and authorizes the legislative body of a local government to designate a local agency to investigate and enforce violations of the Act, as provided.

ANALYSIS:

Existing law:

- 1) Authorizes a tenant to terminate a tenancy in 14 days when the tenant or a household member was a victim of domestic violence, sexual assault, stalking, human trafficking, or abuse of an elder or dependent adult if specified notice is given, including documentation from a qualified third party based on information received by that third party while acting in the third party's professional capacity as specified. (Civ. Code § 1946.7.)
- 2) Provides the following protections for tenants under the Act until January 1, 2030.
 - a) Prohibits specified landlords from raising rents on current tenants by more than 5 percent plus the percentage change in the cost of living, as defined, or 10 percent, whichever is lower, over any 12-month period, except as provided. (Civ. Code §§ 1947.12 & 1947.13.)
 - b) Provides that, once a tenant has occupied residential real property for 12 months, the landlord is prohibited from terminating the lease without just cause, except as provided. (Civ. Code § 1946.2.)

This bill:

- 1) Adds a crime that caused bodily injury or death, that included the exhibition, drawing, brandishing, or use of a firearm or other deadly weapon or instrument, or that included the use of force against the victim or threat of force against the victim to the existing list of eligible crimes for which a tenant may terminate the lease if the tenant or a household member is a victim.
 - a) Authorizes a tenant to terminate a lease if an immediate family member was a victim of an eligible crime.
 - b) Authorizes any other form of documentation that reasonably verifies that the eligible crime or act occurred to be given to the landlord.
 - c) Adds a victim of violent crime advocate to definition of qualified third party that may sign documentation to be provided to a landlord.
 - d) Requires the tenant to provide a specified written statement to the landlord if the tenant is terminating tenancy because an immediate family member is a victim of an eligible crime, the tenant did not live in the same household as the immediate family member at the time of the eligible crime, and no part of the crime occurred within the dwelling unit or within 1,000 feet of the dwelling unit of the tenant.

- e) Requires the notice to terminate the tenancy to be given within 180 days of the date that the newly added eligible crimes occurred.
 - f) Prohibits a landlord from requiring a tenant who terminates a lease under these provisions to forfeit any security deposit money or advance rent paid due to that termination. A tenant who terminates a rental agreement under these provisions cannot be considered for any purpose, by reason of the termination, to have breached the lease or rental agreement.
 - g) Prohibits an owner or owner's agent from refusing to rent a dwelling unit to an otherwise qualified prospective tenant or to refuse to continue to rent to an existing tenant solely on the basis that the tenant has previously exercised the tenant's rights under these provisions.
 - h) Makes various conforming changes.
- 2) Authorizes a city attorney, including the city attorney of a city and county, a district attorney, or a county counsel to bring suit to enjoin and remedy violations of the Act.
- a) Authorizes the legislative body of a local government to create or designate a local agency to investigate and enforce the Act, as specified. Authorizes the designated local agency to do certain things, including investigate complaints, hold administrative hearings for violations of the act, and assess fines for violations of the act.
 - b) Specifies that a party may seek judicial review of a determination made pursuant to these provisions in accordance with Section 1094.5 of the Code of Civil Procedure.
 - c) Repeals these provisions on January 1, 2030.

Comments

1) *Expansion of crime victim's protections*

This bill seeks to extend existing tenant protections to tenants who are victims of other violent crimes (such as robbery, murder, or aggravated assault).

Victims of other violent crimes face many of the same hardships that victims of domestic violence, sexual assault, stalking, human trafficking, and elder and dependent adult abuse face. These challenges include a need to relocate quickly, emotional trauma, potential exposure to additional violence, and a need to regain control of their lives and have a safe environment for themselves and their family. Absent a voluntary release from their landlord, victims who are

forced to relocate in order to find safety could find themselves subject to liability for breaching their leases.

A report from the U.S. Department of Justice found that 68 percent of victims of serious violent crimes (rape, sexual assault, robbery, or aggravated assault) “reported experiencing socio-emotional problems as a result of their victimization.”¹ Evidence shows that “the risk of becoming a victim of violent crime is not equally distributed in society” with low-income persons living in urban areas being at a higher risk of becoming victims of violent crimes.² Individuals with annual incomes of less than \$15,000 a year are twice as often victims of violent crimes than those with higher incomes, and people living in urban areas experience 60 percent more crimes than those in suburban areas.³

In addition, the bill expands these tenant protections to the situation where an immediate family member of the tenant is a victim of an eligible crime. Many of the same policy reasons for allowing a tenant to terminate a tenancy when the tenant or a household member is a victim of an eligible crime also exist when an immediate family member is a victim of an eligible crime. If a tenant’s immediate family member is a victim of an eligible crime, the family member may need to relocate quickly, be suffering from emotional trauma, could potentially be exposed to additional violence, or need additional support from family to recover emotionally and financially. The tenant may wish to move in with the immediate family member, move to a new residence with the family member, or simply move closer to the family member to assist in the family member’s recovery; however, absent a voluntary release from the tenant’s landlord, a tenant who seeks to relocate to assist the family member could find themselves subject to liability for breaching the lease.

This bill also allows any other form of documentation that reasonably verifies that the crime or act occurred to be submitted to a landlord and allows a victim of violent crime advocate to be included as a qualified third party that can fill out and sign the documentation authorized to be given to a landlord.

2) *Expanding local enforcement of the Act*

Tenant’s face many issues when seeking to enforce their rights, including financial hurdles and difficulty navigating the court system. In order to ensure

¹ Langton and Truman, *Socio-emotional Impact of Violent Crime*, (Sept. 2014) U.S. Dep’t of Justice <https://www.bjs.gov/content/pub/pdf/sivc.pdf> (as of June 19, 2020) at 1.

² Kelly et. al. *Outreach, Engagement, and Practical Assistance: Essential Aspects of PTSD Care for Urban Victims of Violent Crime* (Jun. 15, 2010) 11 *Trauma, Violence & Abuse* 144-156, at 145.

³ *Ibid.*

that tenants' rights under the Act are enforced, this bill seeks to do two things. First, it authorizes a city attorney, district attorney, or county counsel to bring suit to enjoin and remedy violations of the Act. Second, the bill authorizes the legislative body of a local government to create or designate a local agency to investigate and enforce the Act, including investigating complaints, accepting administrative claims, making determinations, holding administrative hearings for violations, and awarding restitution or fines not to exceed \$20,000.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

According to the Senate Appropriations Committee, unknown, potentially-significant workload cost pressures to the courts to adjudicate suits filed by city attorneys, district attorneys, and county counsels. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. For example, the proposed 2020-21 Budget would appropriate \$35.2 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)

*Trial Court Trust Fund

SUPPORT: (Verified 6/19/20)

Californians for Safety and Justice (source)

#cut50, Dream Corps

Ahimsa Collective

Alliance for Boys and Men of Color

Alliance of Californians for Community Empowerment

Be Smooth Inc.

Burbank Tenants' Rights Committee

California Latinas for Reproductive Justice

California Partnership to End Domestic Violence

California Reinvestment Coalition

California Rural Legal Assistance Foundation

Causa Justa::Just Cause

City of Oakland

Community Legal Aid SoCal

Congregations Organized for Prophetic Engagement

Courage California

East Bay Housing Organizations

Ella Baker Center for Human Rights

Esperanza Community Housing Corporation

Eviction Defense Network
Fathers & Families of San Joaquin
Harbor UCLA Medical Center's Safe Harbor: Hospital-Based Violence
Intervention Program
Healing Hearts Restoring Hope
Homies Unidos Inc.
Housing and Economic Rights Advocates
Housing Now!
Housing Rights Committee of San Francisco
Initiate Justice
Inquilinos Unidos
Kelly's Angels Foundation Inc.
Law Foundation of Silicon Valley
Monument Impact
Mujeres Unidas y Activas
National Association of Social Workers, California Chapter
Oakland Tenants Union
One Redwood City
Pasadena Tenants Union
Peace Over Violence
Peoples College of Law
PICO CA
Power California
Public Health Advocates
Re:Store Justice
San Francisco Community Land Trust
San Francisco Public Defender
Santa Cruz Barrios Unidos
Silicon Valley De-Bug
SOMOS Mayfair
South Pasadena Tenants Union
StrengthUnited
Tenants Together
UAW 2865
United Communities for Peace
VietRISE
Wellstone Democratic Club
Western Center on Law & Poverty
Working Partnerships USA
Youth ALIVE

2 Individuals

OPPOSITION: (Verified 6/19/20)

Apartment Association of Orange County
Apartment Association, California Southern Cities
California Apartment Association
California Association of Realtors
East Bay Rental Housing Association
Southern California Rental Housing Association

ARGUMENTS IN SUPPORT: The author writes:

California law ensures that victims of domestic violence, sexual assault, stalking, human trafficking, and abuse of an elder or a dependent adult and family members who live in their household can terminate a lease without penalty following victimization. However, victims of other violent crimes (e.g., co-victims of homicide, survivors of gun violence, and survivors of robbery) and their family and household members do not have the same relocation opportunities. When victims of other violent crimes make the difficult decision to break their lease, these victims and their family/household members fall into further financial and housing insecurity. Breaking a lease could leave tenants responsible for financial penalties, mark the tenants' credit score and lead to future landlords discriminating against the tenants. SB 1190 would codify relocation protections for victims and family/household members of violent crimes within 180 days following a crime.

In the second part of the bill, I am proposing local enforcement of existing tenant protections. Last year, I proposed SB 529, which would have protected and strengthened tenant associations and required evictions for cause. Fortunately, Assemblymember Chiu's historic bill, AB 1482, did pass, which codified just cause protections and rent caps. However, AB 1482 has limited enforcement mechanisms. Tenants must take their cases to the Attorney General, and there has been little guidance on this process.

SB 1190 would allow enforcement by local government. This means that a city attorney, including the city attorney of a city and county, any district attorney, or any county counsel can enforce tenant protections. With the help of local governments, tenants should be able to assert their legal rights without fear of intimidation or retaliation, and expect humane living standards. Central to the ability of individuals to join and assert their rights is a strong system of laws

and protections that mitigate the risk of intimidation and retaliation. A more equitable playing field for tenants is inseparable from our vision of Production, Preservation, and Protection.

Supporters of this bill consist of various organizations and associations representing victims of crime and violence, public health advocates, tenants' rights groups, and two individuals. Californians for Safety and Justice, the sponsor of this bill, writes:

A 2019 survey of crime survivors in California found that more than 4 in 10 survivors (42%) would have wanted emergency or temporary housing following the crime, though only 6% received it.[footnote omitted] There are a number of reasons why survivors of any type of violent crime and their family members may need to relocate following a crime [...] SB 1190 would also reduce bureaucratic hurdles and ensure that survivors are not forced to take safety and health risks during the COVID-19 pandemic to obtain paperwork if they need to relocate to escape violence. The bill expands acceptable forms of documentation that a victim can provide for protected lease termination following a crime, allowing alternative documentation to reasonably verify that the eligible crime occurred.

ARGUMENTS IN OPPOSITION: Opponents of this bill are organizations representing landlords and apartment owners and the California Association of Realtors (C.A.R.). Opponents of this bill raise issues with the fact that an immediate family member does not have to be living with the tenant at the time the crime occurred and the enforcement mechanisms for the Act.

C.A.R. writes in opposition:

Existing law includes a longstanding bipartisan mechanism that allows a tenant who is the victim of domestic violence, sexual assault, stalking, human trafficking, elder abuse, or dependent adult abuse to break their lease if they provide written notice to the property owner and specified documentation.

In sharp contrast, SB 1190, among other things, allows a tenant who is NOT a victim of a crime to break their lease under specified conditions.

The Legislature should be cautious about allowing tenants who are NOT victims of a crime to effectively void leases.[Click here to enter text.](#)

The California Apartment Association writes that “SB 1190 represents a broken promise made on AB 1482. The parties worked in good faith on AB 1482 last year and agreed that the act would be enforced through existing procedures. There is no reason to believe additional enforcement mechanisms are necessary when the ink is barely dry on that law.”

Prepared by: Amanda Mattson / JUD. / (916) 651-4113
6/19/20 17:00:04

****** END ******

THIRD READING

Bill No: SB 1207
Author: Jackson (D)
Amended: 5/19/20
Vote: 21

SENATE HEALTH COMMITTEE: 8-0, 5/13/20

AYES: Pan, Lena Gonzalez, Grove, Hurtado, Leyva, Mitchell, Monning, Rubio

NO VOTE RECORDED: Nielsen

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Skilled nursing facilities: backup power system

SOURCE: California Advocates for Nursing Home Reform
Long Term Care Ombudsman Services of San Luis Obispo County

DIGEST: This bill requires skilled nursing facilities to have an alternative source of power to protect resident health and safety for no less than 96 hours during any type of power outage that complies with specified federal requirements.

ANALYSIS:

Existing law:

- 1) Licenses and regulates long term care (LTC) facilities by the Department of Public Health (DPH). LTC facilities include skilled nursing facilities (SNFs), intermediate care facilities (ICFs), ICF/developmentally disabled (ICF/DD), ICF/DD-habilitative, ICF/DD-nursing, and congregate living health facilities. [HSC §1250, et seq., and §1418]
- 2) Defines an “SNF” as a health facility that provides skilled nursing care and supportive care to patients whose primary need is for availability of skilled nursing care on an extended basis. [HSC §1250(c)]

- 3) Requires DPH, in addition to any inspections conducted pursuant to complaints, to conduct inspections annually for LTC facilities that have specified violations within the past 12 months. LTC facilities with no violations within the past 12 months are required to be inspected at least once every two years. [HSC §1422(b)]
- 4) Requires inspections and investigation of LTC facilities that are certified by the Centers for Medicare and Medicaid Services (CMS) to determine compliance with federal standards and California statutes and regulations to the extent that California statutes and regulations provide greater protection to residents, or are more precise than federal standards. [HSC §1422(b)]
- 5) Requires an SNF to provide and maintain an emergency electrical system in safe operating condition, which is required to serve all lighting, signals, alarms, and equipment required to permit continued operation of all necessary functions of the facility for a minimum of six hours. [22 CCR §72641]

This bill:

- 1) Requires an SNF to have an alternative source of power to protect resident health and safety for no less than 96 hours during any type of power outage that complies with federal requirements for long-term care facilities, including, but not limited to, Sections 483.73 and 483.90 of Title 42 of the Code of Federal Regulations.
- 2) Specifies that the federal requirements listed in 1) above include maintaining a safe temperature for residents and staff.

Comments

- 1) *Author's statement.* According to the author, this bill is necessary to help save the lives of nursing home residents during power outages that may result from public safety power shutoffs (PSPS), emergencies, natural disasters and other causes. California's nursing home residents have always faced serious risks from disaster-related emergencies. Today, however, the dangers they face have magnified exponentially due to massive blackouts triggered by PG&E and other utility companies to prevent wildfires during periods of extreme weather. In 2019, dozens of California nursing homes lost power – sometimes for days – due to public safety power shutoffs. Public officials are warning that the dangerous blackouts are likely to continue for a decade or more. Nursing homes without power are a grave threat to their residents. Most residents are

extraordinarily vulnerable, many are completely dependent on their caregivers due to poor health and some rely on electrical-powered life support systems to stay alive. Unsafe temperatures, unrefrigerated medications, and medical devices without power can have deadly consequences for facility residents. Yet California law is silent on backup power requirements for nursing homes, the state's regulations are weak and outdated, and key federal requirements have been rolled-back. This bill will set meaningful standards on backup power to help keep residents safe.

- 2) *PSPS*. After two consecutive years of multiple catastrophic wildfires, at least some of which caused by electric utility infrastructure, in the fall of 2019 broad swaths of California experienced widespread intentional power outages. Electric utilities proactively “de-energized” millions of customers, sometimes for long periods of time, to reduce the risk of igniting wildfires during periods with projected high winds. The Senate Energy, Utilities and Communications Committee held an oversight hearing in November of 2019, entitled “Electric Utility Power Shutoffs: Identifying Lessons Learned and Actions to Protect Californians.” According to the background paper prepared for this hearing, the duration and frequency of PSPS events varied, but in many cases the power was out for multiple days, and in some cases over a week at a time. The power shutoffs resulted in numerous school closures, loss of phone and Internet service for many, and challenges for medical providers in all settings. According to a September 2019 article in *California Healthline*, nursing home operators were concerned about their ability to keep residents cool and food at safe temperatures during a power outage. The article quoted the disaster preparedness manager for the California Association of Health Facilities as saying that SNFs are required to maintain generators for critical medical needs, but some homes do not have air conditioning or refrigerators connected to backup power. The article stated that in the event of a shutoff, nursing homes have to weigh the risks of staying put versus evacuating their residents, some of whom may be cognitively impaired.
- 3) *Federal standards for emergency power*. In order to participate in the Medicare or Medicaid programs, facilities are required to be certified by CMS as meeting all federal requirements. DPH is the designated agency in California to provide CMS certification of health care facilities. There are two federal standards that relate to the requirement that LTC facilities, including SNFs, have backup power for emergencies. The primary federal regulation for how facilities are required to prepare for emergency is contained in 42 CFR §483.73 on emergency preparedness. In addition to this, there are also federal regulations

on how facilities are to be constructed and maintained, contained in 42 CFR §483.90 relating to the physical environment of facilities.

Under the “emergency preparedness” regulations of §483.73, LTC facilities are required to develop and implement emergency preparedness policies and procedures based on a risk assessment and emergency plan. At a minimum, these policies and procedures must address the provision of subsistence needs for staff and residents, whether they evacuate or shelter in place, including food, water, medical and pharmaceutical supplies, and alternative sources of energy to maintain the following: a) temperatures to protect resident health and safety and for the safe and sanitary storage of provisions; b) emergency lighting; c) fire detection, extinguishing, and alarm systems; and d) sewage and waste disposal. In addition, the policies and procedures must include plans for the safe evacuation from the LTC facility, and a means to shelter in place for residence, staff, and volunteers who remain in the facility. The regulation goes on to require that LTC facilities “must implement emergency and standby power systems based on the emergency plan” they are required to develop. With regard to fuel, the regulation states “LTC facilities that maintain an onsite fuel source to power emergency generators must have a plan for how it will keep emergency power systems operational during the emergency, unless it evacuates.”

Under the “physical environment” regulations of §483.90, LTC facilities are required to be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel, and the public, and as part of this requirement, facilities are required to meet specified applicable provisions of the Life Safety Code of the National Fire Protection Association (NFPA). Various NFPA life safety standards are cross referenced in this regulation, and among them is a requirement for “facilities considering seismic events to maintain a minimum 96 hour fuel supply,” and that where the probability of interruption of off-site sources is high, to maintain onsite storage of an alternative fuel source. This regulation also specifies that an emergency power system must supply power “adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life support systems in the event the normal electrical supply is interrupted.

However, CMS also publishes guidance documents for these regulations to guide surveyors who are inspecting for compliance. In the guidance document for the emergency power systems of LTC facilities, the guidance points out that the relevant NFPA standard contains emergency power requirements for

emergency lighting, fire detection and extinguishing systems, and alarms, but do not require heating in general patient rooms during the disruption of normal power. Therefore, the guidance states that “facilities should include consideration for design to accommodate any additional electrical loads the facility determines to be necessary to meet all substance needs required by emergency preparedness plans, policies and procedures, unless the facility’s emergency plans, policies and procedures...determine that the facility will relocate patients internally or evacuate in the event of an emergency.”

- 4) *Inspector General Report.* In November of 2019, the Office of Inspector General (OIG) of the United States Health and Human Services Agency issued a report entitled: *California Should Improve Its Oversight of Selected Nursing Homes’ Compliance With Federal Requirements for Life Safety and Emergency Preparedness*. According to this report, in June of 2018 there were 1,202 SNFs in California that were certified by CMS. The OIG selected a nonstatistical sample of 20 of these nursing homes based on various factors, including the number of high-risk deficiencies that the DPH report to CMS, and the potential risk of environmental threats such as wildfire, earthquake, and extreme heat. The OIG conducted unannounced site visits at the 20 SNFs during the fall of 2018, checking for life safety violations and reviewing the facilities’ emergency preparedness. The OIG found that DPH did not ensure that the nursing homes complied with CMS requirements for life safety and emergency preparedness, and found 137 instances of noncompliance with life safety requirements related to building exits, smoke barriers, and smoke partitions; fire detection and suppression systems, hazardous storage areas; smoking policies and fire drills; and electrical equipment testing and maintenance. The OIG additionally found 188 instances of noncompliance with emergency preparedness requirements related to written emergency plans; emergency power; plans for evacuation, sheltering in place, and tracking residents and staff during and after an emergency; emergency communications plans; and emergency plan training and testing. According to the OIG, the identified deficiencies occurred because nursing homes lacked adequate management oversight and had high staff turnover. In addition, DPH did not adequately follow up on deficiencies previously cited, or ensure that surveyors were consistently enforcing CMS requirements.

With regard to emergency power, the OIG report pointed out that nursing homes located in certain seismic zones must maintain a 96-hour fuel supply. Of the nursing homes visited, nine had one or more deficiencies related to emergency power, including eight that had not properly inspected, tested, and

maintained their generators. Two nursing homes located in certain seismic zones did not have sufficient generator fuel on hand to last 96 hours. With regard to emergency plans, 12 nursing homes had one or more deficiencies related to their emergency plans for evacuations, sheltering in place, or tracking residents and staff during and after emergencies.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/3/20)

California Advocates for Nursing Home Reform (co-source)
 Long Term Care Ombudsman Services of San Luis Obispo County (co-source)
 California Solar & Storage Association
 Consumer Federation of California
 Disability Rights California
 National Association of Social Workers, California Chapter

OPPOSITION: (Verified 6/3/20)

California Association of Health Facilities
 LeadingAge California

ARGUMENTS IN SUPPORT: This bill is co-sponsored by California Advocates for Nursing Home Reform and the Long Term Care Ombudsman Services of San Luis Obispo County. The co-sponsors state that in October 2019, more than 100 SNFs lost power, sometimes for days, during PG&E's badly mismanaged blackouts that were aimed at preventing destructive wildfires. Public officials are warning that the dangerous power shutoffs may continue for a decade or more. According to the co-sponsors, nursing homes without power are a grave threat to their residents, and that unsafe temperatures, unrefrigerated medications, and medical devices without power can have deadly consequences for facility residents. The co-sponsors state that in March 2019, DPH stopped surveying SNFs for a federal 96-hour fuel supply standard that is tied to NFPA requirements, claiming the federal standard had been repealed by CMS. However, CMS is reporting that the standard is still in place and has not been modified. According to the co-sponsors, this bill would codify and clarify the federal 96-hour standard on backup power fuel supply, and in doing so, it will ensure that the standard is well known and enforceable, regardless of any changes in federal regulations.

Disability Rights California states in support that nursing home residents are in harm's way from the frightening PSPS events that are aimed at preventing wildfires. It is critical that nursing homes be prepared for these new threats and

have the capacity to keep all residents safe. The California Solar & Storage Association states in support that with multiple extended power shutoffs expected every year for the foreseeable future, SNFs must be prepared, and that facilities lacking at least 96 hours of backup capability would put their residents at risk.

ARGUMENTS IN OPPOSITION: The California Association of Health Facilities (CAHF) is opposed to this bill unless amended. CAHF states they are heavily reliant on government funding, with 67% of patients statewide on Medi-Cal, and much higher in some facilities. CAHF states that most SNFs were built in the 1960s and 1970s, and because Medi-Cal does not pay for facility improvements, CAHF argues that while owners and administrators do their best to upgrade them and keep them as nice as possible, this bill imposes significant costs that facilities will be unable to afford. According to CAHF, current federal guidance requires SNFS to have 96 hours of fuel for generators or facilities may evacuate. Therefore, CAHF requests that this bill be amended to mirror this ability to evacuate as an alternative to purchasing and accommodating a larger generator and 96 hours of fuel storage. Finally, CAHF states that as written, this bill would require most SNFs to purchase and install new generators and/or HVAC systems. CAHF estimates the cost of new generators at \$500,000, and a similar cost for new HVAC systems, and argues these facilities simply do not have the necessary funds to afford these new requirements. CAHF suggests that either this bill should be narrowed to minimize costs, or this bill should identify a funding source to pay for these upgrades, and notes that a minimum of five years will be needed for new generators and/or HVAC systems to be installed at all facilities around the state.

LeadingAge California is also opposed unless amended, and makes similar arguments, requesting that this bill be amended to continue to allow SNFs to evacuate, or include a state resource to pay for the excess cost of backup generators of this caliber.

Prepared by: Vincent D. Marchand / HEALTH / (916) 651-4111
6/4/20 9:58:15

**** END ****

THIRD READING

Bill No: SB 1213
Author: Leyva (D)
Amended: 3/25/20
Vote: 21

SENATE EDUCATION COMMITTEE: 6-0, 5/12/20
AYES: Leyva, Wilk, Chang, Durazo, McGuire, Pan
NO VOTE RECORDED: Glazer

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Pupil instruction: history-social science academic content standards:
revisions

SOURCE: Author

DIGEST: This bill requires the Superintendent of Public Instruction (SPI), in consultation with the Instructional Quality Commission (IQC) and by November 30, 2023, to recommend to the State Board of Education (SBE) revisions to the history-social science academic content standards, and requires the SBE to adopt, reject, or modify the recommendations by January 31, 2024.

ANALYSIS:

Existing law:

- 1) Required the SBE, by January 1, 1998, to adopt statewide academically rigorous content standards, pursuant to the recommendations of the Commission for the Establishment of Academic Content and Performance Standards, in the core curriculum areas of reading, writing, and mathematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California educational system.
(Education Code § 60605)

- 2) Required the SBE, by November 1, 1998, to also adopt such standards in the core curriculum areas of history/social science and science. (EC § 60605)

This bill requires the SPI, in consultation with the IQC and by November 30, 2023, to recommend to the SBE revisions to the history-social science academic content standards, and requires the SBE to adopt, reject, or modify the recommendations by January 31, 2024. Specifically, this bill:

- 1) Requires the SPI, in consultation with the IQC, to recommend to the SBE revisions to the history-social science academic content standards that were adopted by the SBE in 1998
- 2) Requires the SPI, by November 30, 2023, to present to the SBE the revised history-social science academic content standards, based on the work of the group of experts, conducted in consultation with the IQC.
- 3) Requires the SBE, by January 31, 2024, to adopt, reject, or modify and revisions recommended by the SPI.
- 4) Requires the SPI, in consultation with the IQC and the SBE, to select a group of experts in history-social science for purposes of assisting the SPI in developing recommendations for revisions to the standards. This bill requires a majority of this group of experts to be current public school elementary or secondary classroom teachers who have a valid California professional teaching credential.
- 5) Requires the National Curriculum Standards for Social Studies and the College, Career, and Civic Life (C3) Framework for Social Studies State Standards, developed by the National Council for the Social Studies, to serve as the basis for deliberations regarding revisions to the history-social science academic content standards.
- 6) Requires the SPI, in consultation with the IQC, to hold a minimum of two public hearings in order for the public to provide input on the recommended revisions, and requires the SBE to adopt, reject, or modify those recommendations at a subsequent public meeting.
- 7) Requires the SBE, if it modifies any revisions recommended to these content standards, to explain in writing to the Governor and the Legislature the reasons for modifying the recommended revised content standards.
- 8) Requires the SBE, if it modifies the history-social science academic content standards recommended by the SPI, in a meeting conducted pursuant to the

Bagley-Keene Open Meeting Act, provide written reasons for its revisions. This bill prohibits the SBE from adopting revised standards at the same meeting it provides its written reasons, but must adopt the revisions at a subsequent meeting conducted no later than March 31, 2024.

- 9) Requires the SBE, if it rejects the history-social science academic standards recommended by the SPI, to transmit to the SPI, the Governor, and the appropriate policy and fiscal committees of the Legislature a specific written explanation of the reasons for the rejection of the standards presented by the SPI.
- 10) Authorizes the SBE, if the revisions to the history-social science academic content standards are adopted, to revise its adoption schedule for curriculum framework, evaluation criteria for instructional materials, and adoption of instructional materials for kindergarten and grades 1 to 8, inclusive, that are aligned to the history-social studies academic standards, based on recommendations of the IQC.
- 11) Requires the public hearings and meetings to be held pursuant to the Bagley-Keene Open Meeting Act.

Background

- 1) *Academic content standards.* Academic content standards define the knowledge, concepts, and skills that students should acquire at each grade level. The standards also serve as the basis for the curriculum frameworks and are a criteria by which instructional materials are evaluated. Standards in several subject areas were adopted by the SBE beginning in the late 1990s. Unlike the curriculum frameworks, there is no statutory authority for the review or updating of standards.

The SBE has adopted the following standards:

- a) Visual and Performing Arts Standards, revised January 2019 (originally adopted January 2001).
- b) World Languages Standards, revised January 2019 (originally adopted January 2009).
- c) California Computer Science Standards, adopted September 2018.
- d) Next Generation Science Standards, revised September 2013 (original science standards adopted October 1998).

- e) Common Core Standards in English Language Arts (ELA), modified March 2013 and revised January 2010 (original ELA standards adopted December 1997).
 - f) Common Core Standards for Mathematics, modified January 2013 and revised August 2010 (original math standards adopted December 1997).
 - g) Career Technical Education Standards, revised January 2013 (originally adopted May 2005).
 - h) English Language Development Standards, adopted November 2012.
 - i) Model School Library Standards, adopted September 2010.
 - j) Health Standards, adopted March 2008.
 - k) Physical Education Standards, adopted January 2005.
 - l) History-Social Science, adopted October 1998.
- 2) *Comprehensive approach stalled.* There is no statutory authority for the regular review or updating of standards. Recently, statutory authority has been provided to develop new standards in computer science and to revise existing standards, in world languages and visual and performing arts. Last year, AB 852 (Burke and Weber, 2019) attempted to establish a comprehensive approach by requiring the regular review and possible updating of the standards, but it was vetoed by the Governor, who stated:

This bill creates a new process to routinely evaluate and revise academic content standards. AB 852 shifts the responsibility from the State Board of Education to the State Superintendent of Public to review and recommend updates to academic content standards.

I do not support shifting this responsibility away from the State Board of Education or further complicating the current process.

A similar bill, AB 740 (Weber, 2015), also failed when stalled in the Senate Appropriations Committee due to a disagreement with the Administration over which entity should update the standards, a panel of subject matter experts for each standard or the Instructional Quality Commission. Absent a comprehensive approach to the revision of all standards and frameworks, a one-off measure that addresses the most outdated standards is required to bring the history-social science standards into the 21st century.

- 3) *The National Curriculum Standards for Social Studies and the C3 Framework for Social Studies State Standards.* This bill requires the National Curriculum Standards for Social Studies and the C3 Framework, developed by developed by the National Council for the Social Studies, to serve as the basis for deliberations regarding revisions to the history-social science academic content standards.

According to the National Council for the Social Studies, it “first published national curriculum standards in 1994. Since then, [its] social studies standards have been widely and successfully used as a framework for teachers, schools, districts, states, and other nations as a tool for curriculum alignment and development. However, much has changed in the world and in education since these curriculum standards were published. [Its] 2010 revision aims to provide a framework for teaching, learning, and assessment in social studies that includes a sharper articulation of curriculum objectives, and reflects greater consistency across the different sections of the document. It incorporates current research and suggestions for improvement from many experienced practitioners. These revised standards reflect a desire to continue and build upon the expectations established in the original standards for effective social studies in the grades from pre-K through 12.”

Additionally, the C3 Framework for Social Studies State Standards, which is the result of a three year state-led collaborative effort, “was developed to serve two audiences: for states to upgrade their state social studies standards and for practitioners — local school districts, schools, teachers and curriculum writers — to strengthen their social studies programs. Its objectives are to: a) enhance the rigor of the social studies disciplines; b) build critical thinking, problem solving, and participatory skills to become engaged citizens; and c) align academic programs to the Common Core State Standards for English Language Arts and Literacy in History/Social Studies.”

- 4) *Author’s intent moving forward.* This bill is not necessary this session to address the COVID-19 emergency that the state is facing. However, as policymakers, stakeholders, and agencies continue to evaluate potentially necessary legislative needs in this evolving environment, it may become necessary to have a bill on an issue not yet considered by the Legislature this session. This bill, as it moves forward, would serve that purpose and not its current contents. Should the bill not be needed for that purpose, the author will not continue to move the bill.

Comments

Need for the bill. According to the author, “California’s History-Social Science content standards are outdated. Unlike curriculum frameworks and the guidelines for selecting instructional materials, which are on an eight-year cycle, there is no schedule for the revision of the content standards in any subject. Instead, one-off pieces of legislation are required in order to adopt or revise content standards. Most of California’s 12 content standards have been revised since 2008, but the History-Social Science standards are the only ones that have not been updated or revised since 1998.

The outdated nature of our History-Social Sciences content standards means that the curriculum framework for History-Social Science that is scheduled to be revised in 2024 will once again be revised based on outdated content standards, just as it was in 2016. Outdated content standards also mean that teachers are forced to seek out more recently adopted content standards, such as those developed by the National Council for Social Studies, to guide their practice and elevate their lesson planning. In short, outdated content standards means outdated learning. We need revised History-Social Science content standards to ensure that our students receive the highest quality instruction in History-Social Science, which includes economics, civic engagement and financial literacy.”

Related/Prior Legislation

AB 852 (Burke and Weber, 2019) would have established a process for the regular revision of academic content standards prior to the revision of curriculum frameworks. As discussed above, AB 852 was vetoed by the Governor.

AB 2290 (Santiago, Chapter 643, Statutes of 2016) authorized the SPI to recommend to the SBE revisions to the world language content standards by January 31, 2019.

AB 2862 (O’Donnell, Chapter 647, Statutes of 2016) authorized the SPI to recommend to the SBE revisions to the visual and performing arts content standards by January 1, 2019.

AB 740 (Weber, 2015) would have required the SPI, by January 1, 2017, to recommend to the SBE a schedule for the regular update of academic content standards. AB 740 would have granted the SBE the authority to convene academic content standards advisory committees to update the standards, and requires that the SBE adopt or reject them. AB 740 died in the Senate Appropriations Committee.

AB 1539 (Hagman, Chapter 876, Statutes of 2014) required the IQC to consider developing and recommending computer science content standards by July 31, 2019.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the California Department of Education estimates one-time General Fund costs of approximately \$406,000 for the development of new content standards. This estimate includes the cost to convene an academic content standards review committee to recommend updates to the standards and the contract with a primary writer.

SUPPORT: (Verified 6/19/20)

None received

OPPOSITION: (Verified 6/19/20)

None received

Prepared by: Brandon Darnell / ED. /
6/19/20 16:41:04

**** END ****

THIRD READING

Bill No: SB 1255
Author: Committee on Insurance , et al.
Amended: 5/18/20
Vote: 21

SENATE INSURANCE COMMITTEE: 11-0, 5/14/20
AYES: Rubio, Jones, Archuleta, Dodd, Galgiani, Glazer, Hueso, Mitchell,
Moorlach, Portantino, Roth
NO VOTE RECORDED: Bates, Borgeas

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Insurance

SOURCE: Author

DIGEST: This bill provides procedural flexibility to the California Department of Insurance (CDI) when holding a hearing to suspend or revoke a license for alleged misconduct against seniors; clarifies when a life insurer can restrict access to policy withdrawals; cleans up ambiguity in CDI's licensing statutes; prohibits discrimination in life insurance against HIV positive applicants; and makes other technical, nonsubstantive changes.

ANALYSIS:

Existing law:

- 1) Authorizes the Insurance Commissioner to deny an application for an agent or broker license, or revoke an existing license, if the applicant or licenseholder has engaged in specified activities.
- 2) Requires, for allegations of misconduct perpetrated against a person age 65 or over, a hearing to suspend or revoke a license, registration, or certificate of

authority, be held within 90 days after CDI receives a notice of defense, unless a continuance is granted.

- 3) Prohibits a life insurance policy issued on or after January 1, 2021, that contains long-term care benefits and permits policy loans or cash withdrawals from prohibiting or limiting a loan or withdrawal while the insured receives payment of long-term care benefits, but authorizes the policy to limit future access to policy loans based on the remaining cash value of the policy.

This bill:

- 1) Authorizes a hearing to suspend or revoke a license, registration, or certificate of authority for alleged misconduct perpetrated against a person age 65 or over to be set on the earliest available date if the Office of Administrative Hearings cannot accommodate the hearing within 90 days.
- 2) Authorizes future access to cash withdrawals to be limited to the remaining cash value of the policy.
- 3) Prohibits life and disability income insurers from denying an application based solely on HIV status, and heightens the civil and criminal penalties for negligent, willful, or malicious disclosure of HIV test results.
- 4) Makes various technical, nonsubstantive changes.

Background

Under existing law, CDI can take disciplinary action against an applicant or licensee if they are convicted of a misdemeanor listed in the Insurance Code and other laws, as specified. However, a few relevant statutes refer to these types of misdemeanors as “denounced” by the insurance laws. This term is ambiguous and implies that some misdemeanors are worse than others. This bill would remove the ambiguity attached to the word “denounced” and make the law clearer by using the word “specified”, similar to its use in other Insurance Code sections.

CIC 1738.5 was written as a tool for CDI to use to be able to bring cases involving senior victims to hearing earlier than otherwise occurs. This is due to the myriad of issues that surround a case involving senior victims including the potential death of the victims, memory issues, and availability of witnesses (who are often times themselves seniors) among other concerns. The code states that a hearing “shall” be conducted within 90 days if the case involves allegations of a senior victim. As

currently worded, a licensee accused of wrongdoing against a senior may try to seek dismissal merely because the case was not brought to hearing in 90 days.

This proposal clarifies that the 90-day timeframe is at the “request of the Department” ensuring that cases that are not requested to be heard in 90 days continue to progress through the normal administrative hearing process. This gives CDI the ability to use the expedited hearing time frame for senior cases if necessary and eliminates the potential that cases involving seniors will be dismissed if the case is not filed in 90 days.

AB 1209 (Nazarian, Chapter 625, Statutes of 2019) restricted a life insurer’s ability to limit policyholders’ access to policy loans and cash withdrawals. This proposal fixes wording inadvertently left out of Insurance Code section 10235.45(a)(1) regarding cash withdrawals which was correctly included in (a)(2) of the same section.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, unknown cost pressures to the court to adjudicate charges brought against defendants who disclose the results of a HIV test requested by an insurer to a third party without specified authorization as proscribed by this measure. While the courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to fund additional staff and resources. The CDI does not anticipate SB 1255 to have a fiscal impact on its operations.

SUPPORT: (Verified 6/19/20)

Insurance Commissioner Ricardo Lara
Equality California

OPPOSITION: (Verified 6/19/20)

None received

ARGUMENTS IN SUPPORT: In support of SB 1255, Insurance Commissioner Ricardo Lara writes, “This bill remedies issues identified by the Department of Insurance staff to clarify and cleanup obsolete and superseded code sections.”

Equality California writes, “The Equal Insurance HIV Act will update California’s outdated and discriminatory insurance underwriting laws to clarify that life and disability income insurance providers may not refuse applications based solely on

the outcome of an HIV test. HIV can be treated and managed just as any number of other chronic conditions can be. It is time our laws reflect this reality.”

Prepared by: Brian Flemmer / INS. / (916) 651-4110

6/19/20 17:00:05

****** END ******

THIRD READING

Bill No: SB 1257
Author: Durazo (D)
Amended: 6/2/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 5/14/20
AYES: Hill, Jackson, Mitchell, Pan
NO VOTE RECORDED: Morrell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Domestic service employees: employment safety standards

SOURCE: California Domestic Workers Coalition
California Employment Lawyers Association
Equal Rights Advocates
United Domestic Workers of America, AFSCME Local 3930

DIGEST: This bill (1) removes the “household domestic service” exemption from the Occupational Safety and Health Act definition of employment (thereby applying all of its requirements and obligations on domestic service employers); (2) requires the Department of Industrial Relations (DIR) to convene an advisory committee to evaluate the need to develop industry-specific regulations related to household domestic service; and (3) to authorizes DIR’s Division of Occupational Safety and Health (Cal/OSHA) to enforce occupational safety and health laws to protect domestic service employees at private residential dwellings.

ANALYSIS:

Existing law:

- 1) Assures, under the California Occupational Safety and Health Act, safe and healthful working conditions for all California workers by authorizing the

enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational safety and health. (Labor Code §6300)

- 2) Establishes the Division of Occupational Safety and Health (known as Cal/OSHA) within the DIR to, among other things, propose, administer, and enforce occupational safety and health standards. (Labor Code §6300 et seq.)
- 3) Requires employers to establish, implement and maintain an effective Injury and Illness Prevention Program that is written, except as specified, and shall include, among other things, the following elements (Labor Code §6401.7):
 - a) A system for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices.
 - b) The employer's methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner.
 - c) An occupational health and safety training program designed to instruct employees in general safe and healthy work practices and to provide specific instruction with respect to hazards specific to each employee's job assignment.
 - d) The employer's system for communicating with employees on occupational health and safety matters, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.
- 4) Requires every employer to file a complete report with Cal/OSHA of every occupational injury or occupational illness to each employee which results in lost time beyond the date of the injury or illness, or which requires medical treatment beyond first aid. A report must be filed within five days after the employer obtains knowledge of the injury or illness. In addition to this report, in every case involving a serious injury or illness, or death, the employer is required to make an immediate report to Cal/OSHA by telephone or email. (Labor Code §6409.1)
- 5) Requires Cal/OSHA, if the Division learns or has reason to believe that an employment or place of employment is not safe or is injurious to the welfare of an employee, it may, on its own motion, or upon complaint, summarily investigate the employment or place of employment, with or without notice or

hearings. Certain timeframes exist if a complaint is deemed to allege a serious violation. (Labor Code §6309)

- 6) Requires Cal/OSHA to annually compile data pertaining to complaints received and citations issued and post it on its website. [Labor Code §6309(d)]
- 7) Defines, for purposes of OSHA, “employment” to include the carrying on of any trade, enterprise, project, industry, business, occupation, or work, including all excavation, demolition, and construction work, or any process or operation in any way related thereto, in which any person is engaged or permitted to work for hire, *except household domestic service*. (Labor Code §6303)
- 8) Defines “domestic work” as services related to the care of persons in private households or maintenance of private households or their premises. Domestic work occupations include childcare providers, caregivers of people with disabilities, sick, convalescing, or elderly persons, house cleaners, housekeepers, maids and other household occupations. (Labor Code §1451)
- 9) Establishes within DIR, the Division of Fair Labor Standards Enforcement (DLSE) lead by the Labor Commissioner, tasked with administering and enforcing labor code provisions concerning wages, hours and working conditions. (Labor Code §56)
- 10) Regulates, under the Domestic Worker Bill of Rights, the hours of work of certain domestic work employees and provides an overtime compensation rate for those employees. Specifically, provides that a domestic work employee who is a personal attendant shall not be employed more than nine hours in any workday or more than 45 hours in any workweek unless the employee receives one and one-half times the employee's regular rate of pay for all hours worked over nine in a day and 45 in a workweek. (Labor Code §1450-1454)

This bill:

- 1) Removes the “household domestic service” exemption from the Occupational Safety and Health Act definition of employment, thereby applying all of its requirements and obligations on domestic service employers.
- 2) Requires the Chief of the Cal/OSHA, or a representative of the chief, to convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to household domestic service. The advisory committee shall include an equal number of representatives of household domestic service employees and employers.

- 3) Specifies, for purposes of Cal/OSHA investigations of occupational safety and health, that in the case where the place of employment is a residential dwelling and the employee is a domestic service employee, the chief of the division or their authorized representative shall initiate telephone contact with the employer as soon as possible, but not later than three working days after receipt of a complaint charging a serious violation, and not later than 14 calendar days after receipt of a complaint charging a nonserious violation.
- 4) Specifies that when telephone contact is successfully made, the chief of Cal/OSHA or their authorized representative shall do all of the following:
 - a) Notify the employer of the existence of any alleged unsafe or unhealthful conditions.
 - b) Describe the alleged hazard and any specific regulatory standard alleged to have been violated.
 - c) Inform the employer that they are required, pursuant to Labor Code Section 6401.7, to investigate and abate any hazard discovered during the investigation.
 - d) Inform the employer by letter sent by facsimile or email, or by certified mail if the employer cannot receive facsimile or email, of each alleged hazard and each specific standard alleged to have been violated.
 - e) Inform the employer that if the Division determines that the employer's response is unsatisfactory, the Division shall seek permission from the employer to enter the residential dwelling to investigate the matter, and, if permission is denied, may secure a court order to conduct an onsite inspection of the residential dwelling.
 - f) Provide the complainant with copies of the regulation alleged to have been violated, the Division's letter to the employer, and all subsequent correspondence concerning the investigation of any alleged hazards.
- 5) Provides that a domestic worker employer subject to investigation shall do both of the following:
 - a) Provide to the division, within 14 days of the employer's receipt of the Division's letter, a letter describing the results of the employer's investigation of the alleged hazard and a description of all actions taken, in the process of being taken, or planned to be taken, by the employer to abate the alleged hazard, including any applicable measurements or monitoring

results, invoices for equipment purchased, and photographs or video that document correction of the alleged hazard.

- b) Provide a copy of the Division's letter to the employee, and all subsequent correspondence from and to the employer, to the affected employee, or prominently post the letter and correspondence in the method prescribed by subdivision (a) of Section 6318.

Background

DLSE Domestic Work Industry Outreach and Education Program. As part of the 2019 Budget (SB 83, Committee on Budget and Fiscal Review, Chapter 24, Section 33), Section 1455 was added to the Labor Code requiring the Division of Labor Standards Enforcement to establish and maintain an outreach and education program, in consultation with community based organizations. The purpose of the program is to promote awareness of, and compliance with, labor protections that affect the domestic work industry and to promote fair and dignified labor standards in this industry. Please see the policy committee analysis for more background information.

Comments

Need for this bill? According to the author, “In the private home workplace, occupational risks and hazards for domestic workers include physical and ergonomic demands and exposure to infectious diseases and household cleaning chemicals. Domestic workers are also at risk of suffering from psychological stress, and are especially vulnerable to workplace violations. They are at risk of physical, emotional and sexual abuse by employers or clients, and those risks are heightened because they work alone, in informal workplace environments, without psychological support or physical assistance.

“The current COVID-19 health pandemic and recent California wildfires have magnified the vulnerability and dangers that domestic workers and day laborers face on a daily basis because they are excluded from California’s Occupational Health and Safety protections. The growing frequency and intensity of wildfires and other natural disasters requires that legislators take immediate legislative action to protect the health and safety of these workers.”

Related/Prior Legislation

AB 2658 (Burke, 2020) makes it a crime for a person, after receiving notice to evacuate or leave, to willfully and knowingly direct an employee to remain in, or enter, an area closed under prescribed provisions of law due to a menace to the

public health or safety. The bill defines “employee” for this purpose to include a person receiving employment for household domestic service. The bill is pending referral in Senate Rules Committee.

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

AB 241 (Ammiano, Chapter 374, Statutes of 2013) enacted the “Domestic Worker Bill of Rights” to provide overtime compensation to domestic work employees who are personal attendants, but included a 1/1/17 sunset date.

AB 889 (Ammiano, 2012) would have required, no later than January 1, 2014, the DIR to adopt regulations governing the working conditions of domestic work employees, as defined. The bill was vetoed by the Governor Brown.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the DIR indicates that it would incur annual costs in the millions of dollars to implement the provisions of this bill (Labor Enforcement and Compliance Fund). Among other things, they note that census data indicates that there are currently 11.5 million households in the state. Any household may hire a domestic worker at any given time and thus be subject to the enforcement authority of Cal/OSHA.

SUPPORT: (Verified 6/18/20)

California Domestic Workers Coalition (co-source)
California Employment Lawyers Association (co-source)
Equal Rights Advocates (co-source)
United Domestic Workers of America, AFSCME Local 3930 (co-source)
Alliance of Californians for Community Empowerment Action
American Association of University Women - California
Asian Americans Advancing Justice – California
Asian Pacific Environmental Network
Bet Tzedek Legal Services
California Employment Lawyers Association
California Healthy Nail Salon Collaborative
California Immigrant Policy Center
California Labor Federation, AFL-CIO
California Rural Legal Assistance Foundation
California Women's Law Center

Centro Laboral De Graton
Change Californians for a Healthy and Green Economy
Chinese Progressive Association of San Francisco
Clean Carwash Campaign
Clean Water Action
Coalition for Humane Immigrant Rights
Consumer Attorneys of California
Courage California
Diversity in Health Training Institute
Drug Policy Alliance
El Centro Cultural De Mexico, Santa Ana
Filipino Advocates for Justice
Filipino Community Center
Filipino Migrants Center
Gabriela Oakland
Garment Worker Center
Hand in Hand: the Domestic Employers Network
Instituto De Educacion Popular Del Sur De California
Koreatown Immigrant Workers Alliance
Legal Aid at Work
Los Angeles Worker Center Network
Mujeres Unidas Y Activas
National Council of Jewish Women California
National Domestic Workers Alliance
National Employment Law Project
North Bay Jobs with Justice
North Bay Labor Council
OneJustice
People's Association of Workers and Immigrants East Bay
Pilipino Association of Workers and Immigrants Santa Clara
Poder
Pomona Economic Opportunity Center
Public Counsel
Restaurant Opportunities Center of Los Angeles
Santa Clara County Wage Theft Coalition
SEIU California
Stronger California Advocates Network
Teamsters Local 665
The Women's Foundation of California
Voices for Progress

Work Equity Action Fund
Worksafe
Youth Leadership Institute

OPPOSITION: (Verified 6/18/20)

None received

ARGUMENTS IN SUPPORT: According to proponents, “despite the fact that domestic workers are often put in hazardous and unsafe working conditions in order to care for people’s homes and loved ones, they are unjustly and unjustifiably excluded from California’s Occupational Health and Safety protections. Domestic workers are especially vulnerable because they work long hours for low wages, without access to healthcare and paid sick days. Many are seniors themselves and have their own health challenges.

“During the recent wildfires, domestic workers and day laborers were asked to stay behind to help fight fires, guard homes or pets, and clean up toxic ashes. Workers were also put at risk when their employers failed to tell them not to come in to work when the homes they work in were under mandatory evacuation orders. Currently, there is no recourse for these workers who put themselves in harm’s way or otherwise risk losing their job if they raise concerns about health and safety hazards. And appallingly, there is no legal obligation on the employer’s part to even take the worker’s health and safety into account. This is plainly wrong.”

Prepared by: Alma Perez-Schwab / L., P.E. & R. / (916) 651-1556
6/19/20 17:00:06

**** END ****

THIRD READING

Bill No: SB 1312
Author: McGuire (D) and Stern (D)
Amended: 6/2/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 9-0, 5/26/20
AYES: Hill, Dodd, Hertzberg, McGuire, Pan, Rubio, Skinner, Stern, Wiener
NO VOTE RECORDED: Moorlach, Bradford, Chang, Dahle

SENATE APPROPRIATIONS COMMITTEE: 4-2, 6/18/20
AYES: Portantino, Hill, Levy, Wieckowski
NOES: Bates, Jones
NO VOTE RECORDED: Bradford

SUBJECT: Electrical corporations: undergrounding of infrastructure:
deenergization

SOURCE: Author

DIGEST: This bill proposes a number of requirements related to reducing wildfire risks and proactive power shutoffs by electric investor-owned utilities (IOUs). Specifically, this bill would require a revision to an existing electric tariff in order to underground overhead electric lines in high fire threat areas. This bill also includes several provisions related to oversight requirements by the California Public Utilities Commission (CPUC) of electric IOUs' efforts to reduce their fire risk and use of proactive power shutoffs, including specified reporting, ability to assess fines and penalties, notification requirements, and require specified fire risk mitigation capital expenditures by the electric IOUs by prescribed dates.

ANALYSIS:

Existing law:

- 1) Establishes the CPUC has regulatory authority over public utilities, including electrical corporations. (California Constitution, Article XII, §§3 & 4)

- 2) Requires each electrical corporation to annually prepare a wildfire mitigation plan and to submit its plan to the commission for review and approval, as specified. Requires the wildfire mitigation plan to include, among other things, protocols for disabling reclosers and deenergizing portions of the electrical distribution system that consider the associated impacts on public safety. (Public Utilities Code §8386)
- 3) Requires the CPUC to establish the Wildfire Safety Division within the CPUC to undertake specified tasks. (Public Utilities Code §726) Transfers all function of the Wildfire Safety Division, effective July 1, 2021, to the Office of Energy Infrastructure Safety. (Government Code §15470)
- 4) Authorizes the CPUC to impose fines and civil penalties for the violation of the California Constitution, statutes, or an order, decision, or requirement of the CPUC by a public utility. (Public Utilities Code §1701.6)

This bill:

- 1) Requires the CPUC to revise Electric Tariff Rule 20 to additionally authorize and fund the undergrounding of electrical infrastructure within certain CPUC-designated high fire-threat areas for purposes of wildfire mitigation.
- 2) Requires the CPUC to develop a standard against which to measure the prudence of an electrical corporation's conduct of a public safety power shutoff (PSPS), as defined, and an electrical corporation's fire risk mitigation capital expenditures that motivated the PSPS.
- 3) Requires an electrical corporation that conducts a PSPS to report specified information about the shutoff and its infrastructure expenditures to the CPUC.
- 4) Requires the CPUC to hold a public hearing to determine whether a PSPS was conducted prudently and requires, when a determination is made that the shutoff was not prudent, to levy fines and penalties against the electrical corporation.
- 5) Requires an electrical corporation to notify the CPUC, the Office of Emergency Services (Cal OES), and the Department of Forestry and Fire Protection (Cal FIRE) of a potential PSPS.

- 6) Requires an electrical corporation, on or before July 1, 2021, to identify and report to the CPUC at least 15 percent of its transmission and distribution infrastructure that is most likely to cause a PSPS or ignite a wildfire, that needs fire risk mitigation capital expenditures, and for which fire risk mitigation capital expenditures have not been made by July 1, 2021.
- 7) Requires fire risk mitigation capital expenditures to be made on at least 50 percent of that infrastructure so that a PSPS is not necessary due to that infrastructure except in extraordinary circumstances by July 1, 2023, on at least 75 percent of that infrastructure by July 1, 2024, and on all of that infrastructure by July 1, 2025.

Background

California wildfire and electric utility infrastructure. Electrical equipment, including downed power lines, arcing, and conductor contact with trees and grass, can act as an ignition source. Risks for wildfires also increased with the extended drought and bark beetle infestation that has increased tree mortalities and, as a result, increased the fuel, and risk for wildfires. In recent years, California has experienced a number of catastrophic wildfires, including several that ignited by electrical utility infrastructure, including the 2007 Witch Fire in San Diego County, the 2015 Butte Fire, several of the 2017 fires that ravaged the state, and the brutally deadly Camp Fire in 2018.

Deenergizing electric lines. Generally, electric utilities attempt to maintain power and ensure continued reliability of the flow of electricity. However, as recent catastrophic fires have demonstrated, the risk of fire caused by electric utility infrastructure can pose a great risk, perhaps greater than the risks of turning off the power to certain circuits. As a safety consideration, electric utilities have the ability and authority to deenergize electric lines in order to prevent harm or threats of harm. However, deenergizing electric lines can result in the loss of power to households, businesses, traffic signals, communication systems, critical facilities, water treatment facilities, emergency services and others. Therefore, efforts to deenergize electric lines must consider the potential harm of the energized lines causing a wildfire against the safety hazards associated with eliminating electricity to the areas served by the line(s).

Wildfire Mitigation Plan (WMP). As a result of SB 1028 (Hill, Chapter 598, Statutes of 2016), and further expanded by SB 901 (Dodd, Chapter 626, Statutes of 2018) and AB 1054 (Holden, Chapter 79, Statutes of 2019), electric IOUs are

required to file WMPs with guidance by the CPUC, specifically the Wildfire Safety Division (WSD). The CPUC also reviews and determines whether to approve these plans and ensures compliance with guidance and statute. The electric IOUs' WMPs detail, describe and summarize electric IOU responsibilities, actions, and resources to mitigate wildfires. These actions include plans to harden their system to prevent wildfire ignitions caused by utility infrastructure, such as widespread electric line replacement with covered conductors designed to lower wildfire ignition, pole replacement, and other actions. The plans also include information regarding the electric IOUs' efforts to conduct extensive vegetation management to reduce the risk of tree branches, grasses, and other vegetation from coming into contact with utility infrastructure. The CPUC has further expanded the requirements within the WMPs in its proceeding (R. 18-10-007), including its reviews of the three large electric IOUs' current WMPs.

WMPs and undergrounding electric lines. Per statute, electric utilities must file wildfire mitigation plans with specified information about where they considered undergrounding electric lines to address wildfire risks. In the recently filed plans, the electric utilities include some undergrounding of electric lines. However, in general, they have preferred other more cost-effective options, such as covered conductors, replacement of wooden poles with fire-resistance materials. Based on a February 2020 CPUC Staff Report, "the electric IOUs reported that undergrounding electric lines costs between \$2.6 million and \$6.1 million per mile which is far more expensive than other fire hardening measures such as replacing wooden poles with steel poles and installing covered conductors which the utilities report as costing \$480,000 per mile." Nonetheless, the amount of undergrounding via the WMPs seems to trump that of the Electric Tariff Rule 20 program, an existing program to allocate ratepayer funds for undergrounding conversion projects. For example, in its recent WMP, Southern California Edison notes that last year they converted 0.3 miles of overhead lines to undergrounding via Rule 20. However, in their WMP, they are proposing targeted undergrounding projects, especially in communities with egress and ingress challenges. They expect to convert six miles in 2021 and 11 miles the year after.

Comments

This bill incorporates numerous provisions to address the issues that occurred last fall when over two million customers were left without power, and local and state governments were left scrambling to address the ramifications of such widespread power outages, especially the PSPS events implemented by Pacific Gas and Electric (PG&E). The author states his interest to "create a framework to shorten

and decrease PSPS events and to ultimately eliminate their use by requiring electric IOUs to take both short- and long-term steps to harden their infrastructure.” This bill prescribes measurements to ensure that electric IOUs are making aggressive progress towards reducing the need for proactive power shutoffs and reducing wildfire risks of their systems. Specifically, this bill requires the electric IOUs to make measurable progress, measured by a percentage of its infrastructure that will receive fire risk mitigation capital expenditures with the goal of achieving a goal of no longer needing to utilize proactive power shutoffs to mitigate against fires by July 2025 (five years). This bill also requires specified oversight of proactive power shutoffs events, including specified reports to the CPUC by the electric IOUs, as well as, specifying enforcement when power shutoffs are utilized in a manner inconsistent with the law or CPUC rules. Additionally, this bill includes a provision to require a revision of Electric Tariff Rule 20 to fund undergrounding conversion projects for communications and electrical lines in Tier 2 and Tier 3 high fire threat areas. Lastly, this bill includes provisions requiring notifications to state agencies when proactive power shutoffs are activated, determined to be used, initiated, and reenergizes the lines, and completes the reenergization process. SB 1312 would also authorize joint emergency regulations by the OES, the Cal FIRE, and the CPUC.

Need for Accountability. The governor, the CPUC, and members of the Legislature have commented on the desire to not repeat the experience from the power shutoff events of last fall. The experience led to an eight plus hours hearing by the Senate Committee on Energy, Utilities, and Communications where stakeholder representing many aspects of the affected communities relayed the challenges they experienced during the multiple days of outages and notifications. SB 1312 attempts to tackle the challenges of PG&E’s insistence that their system upgrades will take 10 plus years to achieve the same level of outages (proportionately) as experienced in San Diego Gas & Electric’s territory. The need to aggressively reduce the 10 plus years timeline seems apparent, including to the CPUC who has been taking more aggressive action to ensure progress towards the WMP of the utilities. While this bill may be duplicative in some areas to existing CPUC rules, the need to provide a legislative backstop has merits, as future CPUC commissioners’ attention and focus could shift to other matters. However, there are some areas where the requirements of this bill may need further adjustment in order to provide more flexibility to account for new information. In this regard, the author has noted his intent to continue working on refining some of the measurements and benchmarks required in this bill.

Ratepayer impacts. The provision in this bill to require a revision to Electric Tariff Rule 20 is largely consistent with a current CPUC staff recommendation, although this bill is silent as to the portion of the conversion that should be funded by ratepayers. As these issues come to resolution in the proceeding at the CPUC, the Legislature may want to ensure this bill appropriately limits the ratepayer contribution in order to minimize impacts on electric utility ratepayers. However, operating costs may be less assuming the underground results in a reduced need to repair damaged lines.

Related/Prior Legislation

SB 801 (Glazer, 2020) establishes new requirements on electrical corporations regarding deployment of backup electrical resources to customers receiving medical baseline allowance in high fire-threat areas, if the customer meets specified conditions. The bill is pending consideration before the full Senate.

SB 862 (Dodd, 2020) (1) adds planned deenergization events, as defined, within the conditions that constitute a state of emergency; and (2) adds new requirements of electrical corporations regarding protocols to work with vulnerable populations. The bill is pending consideration before the full Senate.

SB 70 (Nielsen, Chapter 400, Statutes of 2019) required each electrical corporation's WMP to include a description of where and how the electrical corporation considered undergrounding electrical distribution lines within those areas of its service territory identified to have the highest wildfire risk in a specified fire threat map.

SB 247 (Dodd, Chapter 406, Statutes of 2019) made several changes related to the vegetation management requirements of electrical corporations.

SB 378 (Weiner, 2019) requires numerous provisions related to an electrical IOU decision to proactively shut off power, including requiring reimbursements of specified costs, specified penalties for shutting off power, and other reporting. The bill is currently pending in the Assembly Committee on Utilities and Energy.

SB 584 (Moorlach, 2019) would have made changes to programs that help fund conversion projects to replace overhead electrical infrastructure with underground electrical infrastructure in specified areas. The bill was held in the Senate Committee on Appropriations.

AB 1054 (Holden, Chapter 79, Statutes of 2019) shifted the responsibility for review of wildfire mitigation plans from the CPUC to the WSD of the CPUC (temporarily located there) and made modifications to the review process, among other provisions.

AB 111 (Committee on Budget, Chapter 81, Statutes of 2019) required, by January 1, 2020, the CPUC to establish the WSD within the CPUC and requires all functions of the WSD to be transferred to Office of Energy Infrastructure Safety, effective July 1, 2021.

SB 901 (Dodd, Chapter 626, Statutes of 2018) established the requirement that the WMPs of each electrical corporation meet a number of specified requirements, among other provisions.

SB 1028 (Hill, Chapter 598, Statutes of 2016) required electric IOUs to file annual WMPs and requires the CPUC to review and comment on those plans.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Committee on Appropriations:

- The CPUC estimates costs of \$901,000 (special fund) annually to hold public hearings following PSPS events, expand information technology services to receive critical infrastructure information from electric corporations, and perform oversight.
- Unknown costs, likely in tens or hundreds of thousands of dollars annually (General Fund and special fund) to the state as a utility ratepayer.
- To the extent that this bill results in faster or additional infrastructure safety improvements that reduce the risk of wildfire or mitigate the effects of PSPS, unknown savings to the state in reduced emergency response expenditures.

SUPPORT: (Verified 6/18/20)

California Ambulance Association
California State Sheriffs' Association
League of California Cities
Marin Clean Energy
Northern California Power Agency
Rural County Representatives of California
Sonoma Clean Power
Valley Clean Energy

OPPOSITION: (Verified 6/18/20)

California State Association of Electrical Workers
Coalition of California Utility Employees
Pacific Gas and Electric Company
San Diego Gas & Electric
Southern California Edison

ARGUMENTS IN SUPPORT: The organizations in support of this bill universally comment on the issues that have transpired in recent proactive power shutoff events and the desire to ensure greater accountability, coordination, and transparency associated with system improvements and future proactive power shutoff events.

The California State Sheriffs' Association states:

SB 1312 requires electrical corporations to provide important PSPS information to state entities and report on the progress of their distribution and transmission line hardening efforts. This bill will improve public safety and keep communities connected to vital services.

ARGUMENTS IN OPPOSITION: The organizations opposed to this bill express multiple areas of concern, including: duplication with existing CPUC rules, proceedings and efforts; rigid timelines for utility infrastructure improvements; undermining of CPUC state constitutional authority to regulate electric IOUs; and concerns that the bill ignores the comprehensive and strategic approach to mitigate wildfire risk.

In opposing this bill the Coalition of California Utility Employees (CCUE) states:

SB 1312 places strict arbitrary timelines for utilities to complete complex and oftentimes dangerous utility work. These cookie cutter approaches are not appropriate in dangerous construction projects.... Moreover, placing arbitrary timelines on projects will result in contractors pushing deadlines, ignoring safety measures and placing the lives of utility workers at risk!

[Click here to enter text.](#)

Prepared by: Nidia Bautista / E., U., & C. / (916) 651-4107
6/19/20 17:04:16

**** END ****

THIRD READING

Bill No: SB 1347
Author: Galgiani (D), et al.
Amended: 5/22/20
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 8-0, 5/18/20
AYES: Glazer, Archuleta, Dodd, Galgiani, Hill, Leyva, Pan, Wilk
NO VOTE RECORDED: Chang

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Veterinary medicine: authorized care and registration

SOURCE: California Animal Welfare Association

DIGEST: This bill expands exemptions to the practice of veterinary medicine to include specified functions performed at a shelter by an employee or volunteer who has obtained specified training.

ANALYSIS:

Existing law:

- 1) Establishes the Veterinary Medical Board (VMB) under the Department of Consumer Affairs, to license and regulate veterinarians, registered veterinary technicians (RVTs), to issue premises permits for veterinary hospitals, and to issue Veterinary Assistant Controlled Substances Permits. (BPC § 4800 *et seq.*)
- 2) Exempts certain practices from the California Veterinary Medicine Practice Act (Act), including: (a) practicing veterinary medicine as an owner of one's own animals and applies to the owner's bona fide employees, and any person assisting the owner, provided that the practice is performed gratuitously; (b) lay testing of poultry by the whole blood agglutination test, as specified; (c) making any determination as to the status of pregnancy, sterility, or infertility upon livestock, equine, or food animals at the time an animal is being inseminated,

providing no charge is made for this determination; and (d) administering sodium pentobarbital for euthanasia of sick, injured, homeless, or surrendered domestic pets or animals without the presence of a veterinarian when the person is an employee of an animal control shelter and its agencies or humane society.

This bill:

- 1) Adds providing necessary and prompt veterinary care to animals lawfully deposited with or impounded by a shelter, to the list of exemptions to the practice of veterinary medicine for purposes of the Act.
- 2) Defines “veterinary care” to mean any of the following:
 - a) Administering, for the purposes of preventing the spread of communicable diseases, preventative or prophylactic nonprescription vaccinations to the animal without the presence of a veterinarian when the person has received proper training pursuant to protocols written by a licensed veterinarian.
 - b) Administering nonprescription medications, pursuant to protocols written by a veterinarian licensed in this state, to the animal for the control or eradication of apparent or anticipated internal or external parasites, including, but not limited to, fleas, ticks, or worms, without the presence of a veterinarian when the person has received proper training. A person’s decision to administer these medications may not be construed to mean the person has made a diagnosis of the animal’s medical condition.
 - c) Administering medication prescribed by a veterinarian to the animal without the presence of a veterinarian when the shelter has received a written treatment plan from the veterinarian and has a dispensing protocol in place to track prescribed medication that is dispensed.
 - d) Administering basic first aid to the animal without the presence of a veterinarian when the person has received proper training.
 - e) Changing bandages or dressings and performing similar wound care in accordance with the directions of a veterinarian, and upon examination of a veterinarian, without the presence of a veterinarian, when the shelter has received a written treatment plan from the veterinarian and has a wound care protocol in place to track care provided.
- 3) Specifies that a person’s decision to change bandages or dressings or to perform similar wound care cannot be construed to mean the person has made a diagnosis of the animal’s medical condition.

- 4) States that the exemptions described in 2) above apply only to a duly authorized officer, employee, or volunteer of the shelter; and requires the shelter to maintain records of the veterinary care, as specified.
- 5) States that nothing in this bill relieves a duly authorized officer of a shelter from the obligation to convey an injured animal to a veterinarian, as specified, or otherwise necessary to provide the animal with the veterinary care that the shelter is unable to perform.
- 6) Defines “first aid” to mean temporary treatments for purposes of stabilizing an animal so the animal can be transported to a veterinarian for treatment or so that transportation to a veterinarian is not necessary. First aid includes, but is not limited to, controlling hemorrhage with direct pressure and bandaging wounds to stop bleeding.
- 7) Defines “shelter” to mean a public animal shelter, shelter operated by a society for the prevention of cruelty to animals, or humane society.
- 8) States that a premises where any activity described in 2) above is performed, is not required to register with the VMB, provided that no other veterinary medicine, dentistry, or surgery, or a branch thereof, is practiced at that premises.

Background

Veterinarians. To practice veterinary medicine in California, an applicant must graduate from a degree program offered by an accredited postsecondary institution approved by the VMB, pass both a national veterinarian examination, and an examination provided by the VMB to test the knowledge of the laws and regulations related to the practice of veterinary medicine in California.

Business and Professions Code Section 4827 outlines specific exemptions to the practice of veterinary medicine, including: practicing veterinary medicine on one’s own animals; specified poultry testing; determining the status of pregnancy, sterility, or infertility in livestock or food animals; and administering sodium pentobarbital to euthanize sick, injured, homeless, or surrendered animals without the presence of a veterinarian when the person is an employee of an animal control shelter and has received proper training. This bill seeks to add additional exemptions to the practice of veterinary medicine, to include other treatments provided by shelter personnel or volunteers.

Shelters. Current law (FAC § 17005(a)) states that the policy of the state is not to euthanize an animal if it can be adopted into a suitable home. California’s shelter

laws provide a mechanism for owners of lost pets to have a timeframe in which to find their lost animal before the animal is placed for adoption, sale, or even euthanized. There are approximately 200 private and public shelters in California. Shelters are only a repository for the animals, they are not considered to be “owned” by the shelter, and therefore do not meet any of the exemptions to the practice of veterinary medicine. This bill specifies that treatments such as nonprescription flea and tick medications, nonprescription vaccinations, wound care, providing medications prescribed by a veterinarian, under protocols of a veterinarian, and rendering basic first aid would be exempt from the practice of veterinary medicine as long as it is done by a public animal shelter or humane society employee or volunteer who has received the appropriate training to provide the treatments.

The Act and the Veterinary Medical Board. The VMB is the regulatory entity responsible for the licensure and regulation of veterinarians, RVT, schools and programs along with veterinary premises and hospitals through the enforcement of the Act. The VMB is provided with enforcement authority to take actions against both licensed and unlicensed persons for any violation of the Act, including unlicensed practice. The practice of veterinary medicine is specified in statute (BPC § 4826) and includes actions such as diagnosing or prescribing a drug, medicine, appliance, application, treatment of whatever nature, for the cure or relief of a wound, fracture, bodily injury or disease of animals (including those actions of an RVT or a veterinary assistant under the supervision of a licensed veterinarian). Further, the law requires that any premises where veterinary medicine, dentistry, or surgery is being practiced is required to obtain a premises permit from the VMB.

When animals are impounded or taken in at an animal shelter, the shelter is responsible for providing care and treatment of the animals including vaccinations, medication, spay and neuter, preventive medications including flea and tick treatments and de-wormers, among others. However, those treatments are considered the practice of veterinary medicine and must be done by a veterinarian or RVT or veterinary assistant under direction of a veterinarian, and further because veterinary medicine is being practiced, the shelter is required to register with the VMB and obtain a premises permit.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 6/8/20)

California Animal Welfare Association (source)
Best Friends Animal Society

California State Sheriffs' Association
Human Society Silicon Valley
Los Angeles County Board of Supervisors
Rural County Representatives of California
San Diego Humane Society and SPCA
San Francisco SPCA

OPPOSITION: (Verified 6/8/20)

California Veterinary Medical Association
California Veterinary Medical Board

ARGUMENTS IN SUPPORT: Supporters believe this bill is crucial to improve public health and safety as it allows animal shelter workers to vaccinate animals housed at their shelters against communicable diseases and think shelters should be allowed to provide basic care to protect animals. California Animal Welfare Association writes “[This bill] supports the health and safety of sheltered pets by ensuring that shelters are allowed to provide vaccinations and parasite control, administer first aid, and carry out veterinary instructions without the presence of a veterinarian or the requirement to obtain a veterinary premise permit for their facility; something that many shelters are unable to obtain.”

ARGUMENTS IN OPPOSITION: The California Veterinary Medical Association notes “Shelter animals are in stressful and crowded environments. This substantially increase the risk of disease transmission from animals to other animals as well as to humans. Veterinarians possess the education to manage animal population health and to guard against devastating diseases.”

The California Veterinary Medical Board is concerned this bill is “too undefined and may result in significant harm to these animal patients.”

Prepared by: Elissa Silva / B., P. & E.D. / 916-651-4104
6/10/20 13:25:14

**** END ****

THIRD READING

Bill No: SB 1373
Author: Bates (R), et al.
Amended: 5/19/20
Vote: 21

SENATE TRANSPORTATION COMMITTEE: 12-0, 5/29/20
AYES: Beall, Allen, Dahle, Dodd, Galgiani, Lena Gonzalez, Grove, McGuire,
Melendez, Morrell, Roth, Rubio
NO VOTE RECORDED: Skinner, Umberg, Wieckowski

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: State highways: State Route 241: reduction

SOURCE: Author

DIGEST: This bill redefines State Route 241 (SR 241), as specified.

ANALYSIS:

Existing law:

- 1) Establishes the state highway system throughout California.
- 2) Provides the State Department of Transportation with full possession and control of the state highway system and associated property, as specified.
- 3) Designates SR 241 from Interstate 5 (I-5) south of the City of San Clemente to State Route 91 (SR 91) in the City of Anaheim.
- 4) Requires each city, county, and city and county to prepare and adopt a General Plan that contains certain mandatory elements, including a land use element and an open-space element.
- 5) Authorizes the County of Orange and the cities within the County of Orange to form a Joint Powers Authority (JPA) and incur indebtedness for certain

purposes including the construction of bridge facilities or major thoroughfares by which toll roads may be constructed, as specified.

- 6) Authorizes the County of Orange and the cities within the County of Orange to impose developer fees as a condition of approving development plans or building permits for purposes of defraying the cost of constructing infrastructure projects including, but not limited to, bridges, railways, and freeways.
- 7) Authorizes a JPA created by the abovementioned authority to make toll revenues and developer fees available to other JPAs to pay for the cost of constructing and operating separate toll facilities, as specified.
- 8) Provides that, at the local level, Measure V, passed by the City of San Clemente voters and adopted in 2008, requires voter approval of two types of actions: (a) changing the zoning of open space to a non-open space zone, and (b) to allow land uses in open space that were not allowed in any open space zone.

This bill deletes from the state highway system the portion of SR 241 from State Route 5 south of the City of San Clemente to Oso Parkway east of the City of Mission Viejo.

Comments

- 1) *Author's statement.* According to the author, "SB 1373 clarifies existing law that State Route 241 shall not run through the City of San Clemente, by realigning the route's starting point to Oso Parkway east of the City of Mission Viejo. Existing statute designates State Route 241 as starting at State Route 5 south of the City of San Clemente, with the terminus of each side of State Route 241 starting and ending outside the City of San Clemente. However, some have sought to interpret the statute to allow State Route 241 to run through the City of San Clemente. This bill would delete from the state highway system the portion of State Route 241 from State Route 5 south of the City of San Clemente to Oso Parkway east of the City of Mission Viejo. This bill will re-establish the trust between our local entities. SB 1373 will ensure that the compromise will be enduring and that needed congestion relief projects for the region get built."
- 2) Transportation Corridor Agencies (TCAs). The TCA consists of two JPAs formed under statute enacted by the legislature in 1986 to plan, finance, construct, and operate toll roads in Orange County. The TCA consists of two local government agencies:

- a) The San Joaquin Hills TCA which oversees the San Joaquin Hills Toll Road State Route 73 (SR-73), which stretches 15 miles from Newport Beach to San Juan Capistrano in southwest Orange County.
- b) The Foothill/Eastern TCA which runs both the Foothill Toll Road and the Eastern Toll Road which include State Routes 133, 241, and 261, linking SR 91 near the Orange County/Riverside County border to I-5 in Irvine and also to communities in South Orange County.

The TCA has constructed and currently operates approximately 51 miles of toll roads primarily in south Orange County and employs a staff of approximately 68 employees. The Boards of Directors for both the San Joaquin and Foothill/Eastern agencies are comprised of local elected officials in Orange County with toll rates ranging anywhere from \$2 to slightly over \$10 depending on the distance traveled. The toll roads maintained by the TCA are financed with tax-exempt nonrecourse toll revenue bonds on a stand-alone basis; taxpayers are not responsible for repaying TCA debt, rather toll revenue and developer fees cover debt service obligations.

- 3) *SR 241*. SR 241 is a 12-mile state highway that is a toll road for its entire length in Orange County. Its southern half from Ladera Ranch to near Irvine is the Foothill Transportation Corridor, while its northern half to the SR 91 that ends in the City of Anaheim is part of the Eastern Transportation Corridor. SR 241 connects with two other highways of the Eastern Transportation Corridor: State Route 133 and State Route 261. SR 241 travels parallel to I-5, ultimately terminating at Oso Parkway near Mission Viejo in southern Orange County. As noted, the SR 241 toll road was constructed by the TCA and is owned by the state of California. Construction of SR 241 was financed with bonds, which are repaid with toll revenues.
- 4) *South County Traffic Relief Effort (SCTRE)*. In early March of this year, TCA's Board of Directors approved its Scoping and Alternatives Screening Report for the SCTRE approving one alternative to continue evaluating. This alternative, otherwise known as "Alternative 22 untolled," recommends extending Los Patrones Parkway directly east of the City of Mission Viejo from Cow Camp Road to Avenida La Pata as a major thoroughfare. This board-approved recommendation also directs TCA staff to work in collaboration with a number of local agencies to carry out several other projects, including completing a high-occupancy lane on I-5 and the widening of State Route 74 (Ortega Highway) in South Orange County. The Los Patrones Parkway extension will be constructed in an unincorporated portion of Orange County, not within San

Clemente's city limits.

However, the project development process leading up to TCA's recent action did not lack controversy. Prior to the selection of Alternative 22, TCA, at one point in time, was in the process of evaluating and seeking comment on over twenty alternatives; several of which would require construction through the City of San Clemente or construction on I-5. These alternatives raised concerns from a large number of residents from San Clemente and surrounding communities along with a number of local public agencies. TCA's March board-approved recommendation for the Los Patrones Parkway extension remedies many of the concerns from the abovementioned groups.

- 5) *Is this bill necessary?* The author asserts this bill was introduced to clarify SR 241 will not be constructed through the City of San Clemente. However, existing law does not mandate that SR 241 is required to be constructed through San Clemente; state law merely references SR 241's southern terminus as "south of San Clemente." While this bill, if enacted, would in fact prohibit the construction/operation of a state highway through San Clemente, TCA's SCTRE formal process of evaluating alternatives, public comment, and working with public agencies over several years determined that expanding SR 241 as a toll road through San Clemente was not a feasible alternative, and as a result, TCA will now move forward with extending Los Patrones Parkway as an untolled major thoroughfare south to Avenida La Pata. Additionally, as public concerns and growing lack of trust throughout the SCTRE process is without doubt understandable, enacting this proposal in the current legislative session does not prohibit future legislation from again altering SR 241's boundaries within the state highway system. Lastly, it is unclear how this proposal, if enacted, would affect a series of lawsuits currently underway between the City of San Clemente and TCA.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/19/20)

California Cultural Resource Preservation Alliance, Inc.

Capo Cares

City of San Clemente

Coastal Corporate Services

Millennials for Economic Justice

Moms Across America

Non Toxic San Clemente

Not My Toll Road
28 Individuals

OPPOSITION: (Verified 6/19/20)

California State Council of Laborers
City of Lake Forest
City of Mission Viejo
City of Orange
City of Orange Chamber of Commerce
City of Rancho Santa Margarita
City of Tustin
Councilmember Cynthia Conners, City of Laguna Woods
Councilmember David Penaloza, City of Santa Ana
Councilmember Lucille Kring, City of Anaheim
Endangered Habitats League
Hispanic 100 Foundation
Laguna Hills Chamber of Commerce
Lake Forest Chamber of Commerce
Mark Thomas Civil Engineering
Mayor Mike Munzing, City of Aliso Viejo
Mayor Pro Tem Fred Minagar, City of Laguna Niguel
Millenials for Social Economic Justice
Minutes Matter
Natural Resources Defense Council
Orange County Business Council
Orange County Coastkeeper
Orange County Hispanic Chamber of Commerce
Riverside Economic Development Coalition
San Juan Capistrano Chamber of Commerce
Sea and Sage Audubon
South Orange County Economic Coalition
Southwest California Legislative Council
State Building and Construction Trades Council
Supervisor Don Wagner, County of Orange
Supervisor Doug Chaffee, County of Orange

Transportation Corridor Agencies
Wildcoast

Prepared by: Manny Leon / TRANS. / (916) 651-4121
6/19/20 16:35:30

****** END ******

THIRD READING

Bill No: SB 1384
Author: Monning (D)
Amended: 3/25/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 5/14/20
AYES: Hill, Jackson, Mitchell, Pan
NO VOTE RECORDED: Morrell

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Labor Commissioner: financially disabled persons: representation

SOURCE: Author

DIGEST: This bill allows the Labor Commissioner to represent financially unable wage claimants in arbitral proceedings when arbitration has been compelled by a court order.

ANALYSIS:

Existing law:

- 1) Authorizes the Labor Commissioner to investigate employee complaints.
Further authorizes the Labor Commissioner to provide for a hearing, known as a Berman Hearing, in any action to recover wages, penalties, and other demands for compensation, including liquidated damages if the complaint alleges payment of a wage less than the minimum wage. (Labor Code §98)
- 2) Requires that within 15 days of the conclusion of a Berman Hearing, the Labor Commissioner must file a copy of the order, decision or award in the office of the Division of Labor Standards Enforcement. The order, decision, or award shall include a summary of the hearing and the reasons for the decision.
(Labor Code §98.1)

- 3) Allows a party who receives notice of an order, decision, or award following the conclusion of a Berman Hearing to seek review by filing an appeal to the superior court, where the appeal shall be heard de novo. This appeal must be filed within 10 days of receipt of the notice. (Labor Code §98.2)
- 4) Requires a party who wishes to appeal an order, decision or award to post a bond issued by a licensed surety or cash deposit in the amount of the order, decision or award. If any judgment is entered in favor of the employee, the employer shall pay the amount owed pursuant to the judgment. If the appeal is withdrawn or dismissed, the employer shall pay the amount owed pursuant to the order, decision, or award issued by the Labor Commissioner. (Labor Code §98.2)
- 5) Empowers the Labor Commissioner to prosecute all actions for the collection of wages, penalties, and demands of persons who are financially unable to employ counsel and who the Labor Commissioner believes have claims which are valid and enforceable. (Labor Code §98.3)
- 6) Allows the Labor Commissioner to, upon the request of a claimant financially unable to afford counsel, represent such claimant in the de novo proceedings provided for in Section 98.2. In the event that such claimant is attempting to uphold the amount awarded by the Labor Commissioner and is not objecting to any part of the Labor Commissioner's final order, the Labor Commissioner shall represent the claimant. (Labor Code §98.4)

This bill:

- 1) Allows the Labor Commissioner, upon request of a claimant financially unable to afford counsel, to represent such a claimant in the de novo proceedings provided for in Labor Code 98.2, regardless of whether such proceedings are held in a judicial or arbitral form.
- 2) Allows a wage claimant who is unable to have their claim adjudicated and decided by the Labor Commissioner due to the entry of a court order compelling arbitration to request that the Labor Commissioner represent them in the arbitral proceeding. The Labor Commissioner shall represent such a claimant if they are financially unable to afford counsel and if the Labor Commissioner determines that the claim has merit.

- 3) Orders that a petition to compel arbitration of a claim pursuant to Labor Code 98, 98.1, or 98.2 be served to the Labor Commissioner. Upon request of a claimant, the Labor Commissioner has the right to represent the claimant in proceedings to determine the enforceability of the arbitration agreement, regardless if that adjudication takes place in a judicial or arbitral form.

Comments

Need for this bill? According to the author, “Under existing law, the Labor Commissioner plays an adjudicatory role in the Berman hearing, but thereafter, if the Berman hearing results in an order, decision or award (ODA) in favor of the claimant, and the employer files a de novo appeal of that ODA, and the claimant cannot afford private counsel, the Labor Commissioner is required to represent the claimant in the de novo proceedings. Existing law does not provide authorization for the Labor Commissioner to represent a wage claimant unless there has been a Berman hearing and a resulting Order, Decision or Award in the claimant’s favor. Thus, a wage claimant forced to arbitrate a wage claim, and prohibited from having the claim heard and decided by the Labor Commissioner, is deprived of the right to no-cost representation. Claimants who cannot afford private counsel face a higher prospect of a defeat in arbitration or settlement of their claim at a substantial discount.”

According to the Senate Labor, Public Employment and Retirement Committee staff:

Under current law, the Labor Commissioner is authorized to adjudicate claims by employees that allege their employer has paid them less than the minimum wage. This administrative process is known as a Berman Hearing. During this process, the commissioner can represent a worker who is financially unable to afford counsel and, due to the more informal nature of the process, often a Berman Hearing is much swifter at rendering a judgment than judicial avenues. Upon the conclusion of a Berman Hearing, a party that does not agree with the decision they may appeal it and have the claim heard again from the beginning. At this point, several potential obstacles present themselves to employees.

More and more, employers are requiring their employees to sign documents as a condition of hiring that compel arbitration in disputes with their employer. Arbitration is not inherently unfair, but for a variety of reasons arbitration favors employers and exacerbates the inherent resource disadvantage present in an employee-employer relationship. Depending on the type of mandatory

arbitration document, an employee may be prohibited from having the Labor Commissioner represent them in a Berman Hearing, might be compelled into arbitration following the appeal of a judgment or may be blocked from utilizing the Berman Hearing process at all.

To address these challenges, SB 1384 grants the Labor Commissioner additional leeway to represent a minimum wage claimant in two important ways. First, it allows the commissioner to represent the worker in a de novo appeal to a Berman Hearing decision, whether that appeal takes place in an arbitral setting or not. Second, it requires that a court order to compel arbitration of an employee's wage claim be served to Labor Commissioner, rather than to the employee. The employee may then request that the commissioner represent them in any proceedings to determine whether that court order is valid and enforceable.

With mandatory arbitration within contracts becoming standard across numerous industries, it is becoming harder and harder for employees to successfully bring wage claims against their employers for violations. These two technical changes to the Labor Commissioner's ability to represent financially-unable workers will help ensure that unpaid wage claims are resolved swiftly and fairly.

Related/Prior Legislation

AB 51 (Gonzalez, Chapter 711, Statutes of 2019) prohibited requiring applicants for employment or employees to waive their right to a judicial forum as a condition of employment or continued employment.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/8/20)

California Employment Lawyers Association

OPPOSITION: (Verified 6/8/20)

None received

ARGUMENTS IN SUPPORT: According the author, "This proposal addresses the increasing use of mandatory arbitration agreements in employment and would allow the Division of Labor Standards Enforcement to represent wage claimants in arbitral proceedings when they are unable to have their wage claims adjudicated by

the Labor Commissioner in the Berman hearing process due to a court order compelling arbitration of the claim.”

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556
6/10/20 13:25:17

****** END ******

THIRD READING

Bill No: SB 1399
Author: Durazo (D), et al.
Amended: 5/19/20
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-0, 5/14/20
AYES: Hill, Jackson, Mitchell, Pan
NO VOTE RECORDED: Morrell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Bates, Jones

SUBJECT: Employment: garment manufacturing

SOURCE: BET TZEDEK
California Labor Federation
Garment Worker Center
Western Center on Law and Poverty

DIGEST: This bill prohibits the practice of piece-rate compensation for garment manufacturing, except in the case of worksites covered by a valid collective bargaining agreement. This bill requires a garment manufacturer who contracts with another person for the performance of garment manufacturing to jointly and individually share all civil legal responsibility and civil liability for all workers in that other person's employ.

ANALYSIS:

Existing law:

- 1) Establishes Industrial Welfare Commission Wage Order #1, which governs the Manufacturing Industry, including garment manufacturers. The order delineates working conditions and compensation required by employers including, among others, hours and days of work, overtime pay, minimum

wages, reporting and record-keeping requirements, maintenance and distribution of uniforms and equipment, meal and rest periods, temperature, inspections and penalties associated with violations. (IWC Order No. 1)

- 2) Defines “Garment Manufacturing” to mean sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for sale or resale by any person or any persons contracting to have those operations performed and other operations and practices in the apparel industry. (Labor Code §2671)
- 3) Defines “Contractor” to mean any person who, with the assistance of employees or others, is primarily engaged in sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual, including, but not limited to, clothing, hats, gloves, handbags, hosiery, ties, scarfs, and belts, for another person. “Contractor” includes a subcontractor that is primarily engaged in those operations. (Labor Code §2671)
- 4) Defines “Person” to mean any individual, partnership, corporation, limited liability company, or association, and includes, but is not limited to, employers, manufacturers, jobbers, wholesalers, contractors, subcontractors and any other person or entity engaged in the business of garment manufacturing. “Person” does not include any person who manufactures garments by himself or herself, without the assistance of a contractor, employee, or others; any person who engages solely in that part of the business engaged solely in cleaning, alteration, or tailoring. (Labor Code §2671)
- 5) Requires that every employer engaged in the business of garment manufacturing keep accurate records for three years of specified information about their employees and compensation practices. (Labor Code §2673)
- 6) Requires that a person engaged in garment manufacturing who contracts with another person for the performance of garment manufacturing operations guarantee the payment of the applicable minimum wage and overtime compensation that are due from that person to its employees that perform those operations. Allows employees to enforce this guarantee by filing a claim with

the Labor Commissioner against the contractor and the guarantor or guarantors, if known, to recover damages. (Labor Code §2673.1)

- 7) Establishes a procedure by which the Labor Commissioner dispenses with claims filed for unpaid wages or overtime payments. This includes notification to involved parties, the calling of a meet-and-confer conference and an issuance of judgment by the Labor Commissioner. (Labor Code §2673.1)
- 8) Requires every person engaged in garment manufacturing to register with the Labor Commissioner. Also sets conditions of registration or renewal of registration, including the requirement that a registrant have a surety bond on file if they have committed a minimum wage or overtime violation within 3 years prior of the attempt to renew registration. (Labor Code §2675)
- 9) Orders the Labor Commissioner to deposit 75 dollars of each registrant's annual registration fee into one separate account, which is to be disbursed by the commission only to persons damaged by failure to pay wages or benefits by any garment manufacturer, jobber, contractor, or subcontractor. Any disbursement must be made pursuant to a claim for recovery from the fund in accordance with procedures prescribed by the Labor Commissioner. (Labor Code §2675.5)
- 10) States that a person engaged in garment manufacturing who contracts with any other person similarly engaged who has not registered with the commissioner is deemed an employer, and is jointly liable for any violation of the above registration requirements. (Labor Code §2677)
- 11) Allows any employee of an unregistered garment manufacturer to bring a civil action against that employer to recover any wages, damages, or penalties incurred from a violation of the above registration requirements. Further allows such an employee to file a claim with the Labor Commissioner pursuant to Section 2673.1. In any civil action brought pursuant to this subdivision, the court shall grant a prevailing plaintiff's reasonable attorney's fees and costs. (Labor Code §2677)

This bill:

- 1) Adds "dying, altering a garment's design, causing another person to alter a garment's design or affixing a label on a garment" to the definition of "Garment Manufacturing".

- 2) Adds “dying, altering a garment’s design, causing another person to alter a garment’s design or affixing a label on a garment” to the definition of “Contractor” within the garment industry.
- 3) Defines “Brand Guarantor” to mean any person contracting for the performance of garment manufacturing, including sewing, cutting, making, processing, repairing, finishing, assembling, dying, altering a garment’s design, affixing a label on a garment, or otherwise preparing any garment or any article of wearing apparel or accessories designed or intended to be worn by any individual.
- 4) Requires, in addition to existing record keeping requirements in Labor Code §2673, all garment manufacturing employers to keep records for 3 years of all contracts, invoices, purchase orders, work orders, style or cut sheets, and any other documentation pursuant to which work was, or is being, performed. This documentation must include the names and contact information of the contracting parties.
- 5) Prohibits the paying of an employee in the garment manufacturing industry by the piece or unit or by piece rate. This prohibition does not apply to a workplace where employees are covered by a bona fide collective bargaining agreement, or other enforceable agreement, if the agreement expressly provides for wages, hours of work, working conditions, stewards or monitors, and a process to resolve disputes concerning nonpayment of wages.
- 6) Requires a person engaged in garment manufacturing who contracts with another person for the performance of garment manufacturing operations to jointly and severally share all civil legal responsibility and civil liability for all workers employed by that contractor or brand guarantor.
- 7) Requires a person engaged in garment manufacturing who contracts with another person for the performance of garment manufacturing operations to guarantee both the payment of unpaid minimum wages, overtime pay, break premiums, liquidated damages, and any other penalties, and attorney’s fees and penalties associated with lack of Worker’s Compensation coverage.
- 8) Creates a rebuttable presumption in a claim filed to recover unpaid wages, wherein if an employee has provided the Labor Commissioner with labels from a brand guarantor or garment manufacturer, that the brand guarantor or

garment manufacturer is considered to be a guarantor with respect to the claim. In such a case, an employee's claim of hours worked, back wages due, and identity of guarantors will be presumed valid unless the brand guarantor, garment manufacturer, contractor or subcontractor provides specific, compelling, and reliable written evidence to the contrary.

- 9) Allows an aggrieved employee to recover liquidated damages equal to the unpaid wages or overtime compensation unlawfully withheld and makes a guarantor as defined by this bill liable for those liquidated damages if they have acted in bad faith.
- 10) Establishes the Garment Manufacturers Special Account (GMSA), which is funded by 75 dollars of each registrant's annual registration fee deposited by the Labor Commissioner. The commissioner disperses funds to persons damaged by the failure to pay wages and benefits by a garment manufacturer, jobber, brand guarantor, contractor, or subcontractor.
- 11) Requires an employee who has been damaged by an employer's failure to pay wages to attempt to collect the wages, penalties, or other related damages directly from the employer before making a claim for payment from the GMSA.
- 12) Requires an employee or their representative seeking recovery of unpaid wages or other related damages from the GMSA to submit a claim to the Labor Commissioner including all of the following information:
 - a) Name, mailing address and telephone number of the aggrieved employee.
 - b) Aggrieved employee's social security number or individual taxpayer identification number.
 - c) Name, address, and telephone number, if known, of the employer that failed to pay the employee.
 - d) The period of time during which the wages were earned.
 - e) The number of hours worked or other basis for being paid wages.
 - f) The promised rate of pay.
 - g) The actual rate of pay.
 - h) The amount of wages sought.
 - i) The amount of penalty sought, if any, and the Labor Code section pursuant to which the penalty would be imposed.
 - j) An itemization, description, and the amount of other related damages sought, if any.

- k) The amount of recovery sought, minus any amount recovered from the employer or the employer's surety bond.
 - l) The new amount of total recovery sought, if different from the amount in (k).
 - m) Proof of damages actually suffered.
 - n) A copy of the employee's written assignment of the claim to the representative, if applicable.
 - o) A declaration or affidavit containing information regarding attempts made by the employee or their representative to satisfy the claim against the surety bond held by the manufacturer, guarantor or contractor and the results of the demand.
- 13) Authorizes the Labor Commissioner to order an investigatory hearing to determine the validity of a claim seeking recovery from the GMSA.

Comments

1) *Need for this bill?* _According to the author:

“AB 633 was a landmark worker protection law, but the time has come to amend it, as retailers and manufacturers have spent the last 20 years finding ways to circumvent this law to avoid liability, resulting in thousands of workers in California being unable to recover their stolen wages.

No industry is more rife with these violations than the garment industry, where the pricing structure is dictated by so-called retailers, that then contract with a network of manufacturers and subcontractors to produce their garments. Until the original intent of AB 633 can be restored, and upstream liability can be established, the unrelenting problem of wage theft in the garment industry will continue.”

- 2) *History of AB 633.* Garment manufacturing continues to be one of the largest employment sectors in California and across the country, which has historically led to certain abuses of workers including wage theft, unsafe working conditions and the use of undocumented immigrant labor. In late 1999, AB 633, also known as the Garment Worker Protection Act, was chaptered and attempted to curb some of the more abusive practices within the garment manufacturing industry. Under this law, garment workers who are not paid for their work may file claims against the contractor who hired them, as well as the manufacturers whose garments they produced. In some cases, retailers may also

be responsible for garment workers' unpaid wages. The law designated these manufacturers and retailers as "guarantors" and ordered that they be responsible for guaranteeing that garment workers receive their wages. AB 633 also created a special account that a piece of each registration fee paid by garment manufacturers would be deposited into, that could pay out to workers denied their wages and benefits.

While the new law gave much needed and deserved relief to low-wage garment workers, it also faced challenges in enforcement. In a report written 6 years later entitled "Reinforcing the Seams: Guaranteeing the Promise of California's Landmark Anti-Sweatshop Law", several nonprofits found that "poor implementation of AB 633 by DLSE and flagrant disregard of the law by many apparel companies effectively strip AB 633 of its power." The report noted that the number of wage claims by garment workers had sharply increased to nearly 2,300 between 2001-2004, compared to just 565 from 1995-1998. However, reports in 1999 had found that nearly 70% of the tens of thousands of garment workers in California were denied minimum wage and overtime payments, meaning these claims represented only a tiny fraction of the potential total stolen wages. Despite the difficulty in making workers aware of their rights, the average amount recovered per claimant tripled and guarantors that were ordered to pay workers by the DLSE began honoring those obligations. Even though these claims were a drop in the bucket compared to the total amount of stolen wages, many considered this a qualified success in beginning to hold bad actors accountable.

- 3) *Recent Challenges and the COVID-19 Outbreak.* Unfortunately, years later the plight of many garment workers remains unchanged. A 2016 study by the UCLA Labor Center found that garment workers in Southern California made an average of only \$5.15 per hour, less than half the minimum wage. The report further noted, "60% [of workers] reported excessive heat and dust accumulation due to poor ventilation that rendered it difficult to work, and even to breathe." Additional studies at the federal level seem to confirm these trends. A 2016 Department of Labor survey found that 85% of garment shops in Southern California failed to pay minimum wage and in 2019 Labor Department investigators recovered more than 2 million dollars for Southern California garment workers.

Ostensibly, these wage claims would be handled by the special account created by the Garment Worker Protection Act. Regrettably, for most of the account's history, the wage claims outnumbered the registration fees and workers faced a

years-long waiting list for restitution. To help temporarily shore up the account, Governor Newsom included more than \$16 million in the 2019 state budget to clear the wait list. Future claims remain in question, as these funds were only included as a one-time payment.

Disturbingly, even more recent examples can be found. Due to the spread of COVID-19 in early March of 2020 demand for protective masks surged, sending ripples through the garment manufacturing industry. An article in the Los Angeles Times entitled “The Sweatshops Are Still Open. Now They Make Masks” followed several low-wage garment workers as they adjusted to changes in their work brought on by the pandemic. Their accounts revealed that in addition to being stiffed on minimum wage and overtime payments, these workers are being asked to work in violation of statewide social distancing orders and against the recommendations of the CDC. The CDC recommends a boundary of 6 feet of distance from others and calls on companies to “increase ventilation by opening windows or adjusting air conditioning”. Workers reported not having room to comply with these guidelines and complained of continued poor ventilation.

- 4) *Potential Solutions within SB 1399.* SB 1399 takes a number of steps to attempt to address the problems described above. Notably, it bans the practice of piece-rate or by-unit compensation within the garment industry, a practice that has been used to disguise how low employees’ pay is. With the increased threat to workers making masks for the COVID-19 crisis, it is important that those working these essential services are secure in the knowledge that they will be paid all the wages they earn.

The bill changes the definitions of garment manufacturing, contractor and brand guarantor to better describe employers who should be registering as garment manufacturers and paying applicable fees. It then requires this wider pool of employers to jointly and severally share all civil legal responsibility and civil liability with their contractors or brand guarantors for all workers employed. This means that garment manufacturers would be responsible for many more penalties that currently would be incurred by subcontractors that are notoriously difficult to hold accountable.

SB 1399 also addresses shortfalls in the special account for unpaid claims of garment workers. It re-establishes the account as the Garment Manufacturers Special Account, still funded by 75 dollars out of every manufacturer’s registration fee. After attempting to reclaim unpaid wages from their employer

directly, an employee may make a claim to the Labor Commissioner asking to be paid out of the GMSA and providing certain information, most of which can be found on a Labor Commissioner order distributed after a meet-and-confer conference.

This bill contains a number of changes within a single piece of legislation for garment industry regulation. Even in the best of circumstances, it can be hard for employers to keep pace with regulations and the COVID-19 pandemic only worsens matters, incentivizing poor working conditions, taxing supply chains and making enforcement even more difficult for Labor Standards Enforcement investigators. Nevertheless, the available data outlines a pattern of disregard for labor law and wage theft by too many employers in the garment manufacturing industry. While it is important for this bill to strike a balance between protecting the rights of workers and the feasibility of businesses, thousands of garment workers continue to go to work without the secure knowledge that they are being fairly compensated.

Related/Prior Legislation

SB 588 (De León, Chapter 803, Statutes of 2015) allowed the Labor Commissioner to file a lien or levy on an employer's property in order to assist the employee in collecting unpaid wages when there is a judgment against the employer.

AB 633 (Steinberg, Chapter 554, Statutes of 1999) created new regulations for garment manufacturers and their contractors to prevent wage theft within the industry. Created a special fund using money from garment manufacturer's registration fees to cover unpaid wage claims brought against an employer or contractor in the garment industry in cases where the claim cannot be paid by the violator.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, the Department of Industrial Relations (DIR) indicates that it would incur first-year costs of \$1.2 million, and \$1.1 million annually thereafter, to implement the provisions of the bill (Labor Enforcement and Compliance Fund).

SUPPORT: (Verified 6/18/20)

BET TZEDEK (co-source)

California Labor Federation (co-source)

Garment Worker Center (co-source)

Western Center on Law and Poverty (co-source)
Alliance of Californians for Community Empowerment
American Association of University Women - California
American Civil Liberties Union/Northern California/Southern California/San
Diego and Imperial Counties
Asian Americans Advancing Justice - California
Bay Rising
California Catholic Conference
California Domestic Workers Coalition
California Employment Lawyers Association
California Immigrant Policy Center
California Latinas for Reproductive Justice
California Low-income Consumer Coalition
California Pan - Ethnic Health Network
California Partnership for Working Families
California Rural Legal Assistance Foundation, INC.
California State Council of Service Employees International Union
California Women's Law Center
Center for Workers' Rights
Chinese Progressive Association
Clean Carwash Campaign
Clergy and Laity United for Economic Justice
Coalition for Humane Immigrant Rights
Coalition of California Welfare Rights Organizations
Coalition to Abolish Slavery & Trafficking
Consumer Attorneys of California
Courage California
Diana Diaz
Equal Rights Advocates
Fashion Revolution USA
Freefrom
Friends Committee on Legislation of California
Instituto De Educacion Popular Del Sur De California
International Labor Rights Forum
Jewish Public Affairs Committee
Kiwa
Latino Coalition for a Healthy California
Legal Aid at Work
Los Angeles County Federation of Labor
Los Angeles Worker Center Network

Maquiladora Health & Safety Support Network
Mayor Eric Garcetti, City of Los Angeles
Nana Atelier
National Day Laborer Organizing Network
National Immigration Law Center
National Union of Healthcare Workers
Para Los Ninos
Partnership for Working Families
Pilipino Workers Center
Public Counsel
Sisters of St. Joseph of Orange
Southern California Coalition for Occupational Safety & Health
Stronger California Advocates Network
Suay Sew Shop
The Women's Foundation of California
United Food and Commercial Workers, Western States Council
United Students Against Sweatshops
Voices for Progress
Wage Justice Center
Warehouse Worker Resource Center
Western States Regional Joint Board, Workers Union - SEIU
Work Equity Action Fund
Worksafe

OPPOSITION: (Verified 6/18/20)

Beverly Hills Chamber of Commerce
Brea Chamber of Commerce
California Business Properties Association
California Chamber of Commerce
California Manufacturers & Technology Association
California Retailers Association
Carlsbad Chamber of Commerce
Gilroy Chamber of Commerce
Los Angeles Area Chamber of Commerce
National Federation of Independent Business
North Orange County Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Oxnard Chamber of Commerce
Pleasanton Chamber of Commerce

Rancho Cordova Chamber of Commerce
San Gabriel Valley Economic Partnership
Santa Maria Valley Chamber of Commerce
Southwest California Legislative Council
Torrance Area Chamber of Commerce

ARGUMENTS IN SUPPORT: The Garment Worker Center and a coalition of worker and immigrant focused organizations write in support:

“Even before the COVID-19 Public Health Emergency, numerous retailers and manufacturers frustrated AB 633’s original purpose, avoiding liability for systemic abuse by creating layers of subcontracting, enabling retailers and manufacturers to claim that they do not fall under AB 633’s definition of ‘garment manufacturer,’ and are therefore not liable for rampant and egregious wage violations.

SB 1399 will amend current law in three ways. It will: 1) expand liability, ensuring that retailers cannot use layers of contracting to avoid liability; 2) prohibit the use of paying garment workers by the “piece,” thereby eliminating a significant obstacle to workers being paid minimum wage and also protecting their health and safety; and 3) explicitly authorize the Labor Commissioner’s Bureau of Field Enforcement (BOFE) to investigate and cite guarantors for wage theft.

Given that a significant and growing sector of the garment industry is shifting to PPE production, deemed essential labor at this time, while wages, working conditions and the threat of wage theft are as exploitative as ever, SB 1399 is a timely and relevant policy solution. SB 1399 is fundamentally needed now more than ever for this important and vulnerable workforce.”

ARGUMENTS IN OPPOSITION: The California Chamber of Commerce and a coalition of garment manufacturers and other businesses write in opposition:

“The California Chamber of Commerce and the organizations listed below are opposed to SB 1399 as the bill places enormous burdens on non-unionized employers in the clothing industry, punitive enforcement measures, and unrealistic bond requirements. SB 1399 will put employers in this industry, who are already suffering from the financial crisis of this pandemic, out of business.

In 2015 we worked together with then Pro Tem De Leon and labor, to provide the Labor Commissioner with unprecedented tools and authority to address wage theft. The Labor Commissioner has to the tools to penalize and prosecute bad actors,

including those in the garment manufacturing industry. The additional burdens imposed by SB 1399 are unnecessary given the authority provided under SB 588.

This bill imposes significant burdens and liability onto any employer or contractor in the garment manufacturing industry, including a new category of companies defined as ‘brand guarantors,’ which basically includes any person or entity in the clothing industry, including dry cleaners, small and large retailers, second hand retailers, personal shoppers, online personal shoppers, and more. But interestingly, SB 1399 provides a blanket exemption to nearly all of these laws if employees are covered by a ‘bona fide collective bargaining agreement.’ If these proposed changes are appropriate for non-unionized workforces, then they should be appropriate for unionized workforces too.

Finally, SB 1399 imposes joint and several liability on any company that contracts with another person for the performance of garment manufacturing or who contracts with a “brand guarantor” as defined, for the minimum wages, overtime, break premiums, liquidated damages, penalties, attorney’s fees, and worker’s compensation coverage. Basically, any person or entity that contracts in the apparel industry could be on the hook and liable for the wage and hour violations, penalties, attorney’s fees, etc. even though that person or entity exercised **no control** over the workers.”

Prepared by: Jake Ferrera / L., P.E. & R. / (916) 651-1556
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**** END ****

THIRD READING

Bill No: SB 1403
Author: Hueso (D)
Introduced: 2/21/20
Vote: 21

SENATE ENERGY, U. & C. COMMITTEE: 9-0, 5/14/20
AYES: Hueso, Bradford, Dodd, Hertzberg, Hill, McGuire, Rubio, Stern, Wiener
NO VOTE RECORDED: Moorlach, Chang, Dahle, Skinner

SENATE APPROPRIATIONS COMMITTEE: 5-1, 6/18/20
AYES: Portantino, Bradford, Hill, Leyva, Wieckowski
NOES: Jones
NO VOTE RECORDED: Bates

SUBJECT: Home weatherization for low-income customers

SOURCE: Energy Efficiency Council

DIGEST: This bill expands the population of eligible low-income customers for the purposes of the Energy Savings Assistance (ESA) Program administered via the California's four largest electric and gas investor-owned utilities (IOUs).

ANALYSIS:

Existing law:

- 1) Establishes the California Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations and gas corporations. (California Constitution, Article XII, §§3 and 4)
- 2) Requires an electrical or gas corporation to perform home weatherization services for low-income customers if the CPUC determines that a significant need for those services exists in the utility's service territory, as specified. (Public Utilities Code §2790)

- 3) Requires the California Energy Commission to develop and implement a comprehensive program to achieve greater energy savings in California's existing residential and nonresidential building stock. (Public Resources Code §25943 et seq.)

This bill defines “low-income customers” for the purposes of eligibility for the ESA program to mean low-income persons and families that meet the definitions under regulations established and published by the California Department of Housing and Community Development (HCD).

Background

ESA Program. One of the state's oldest energy assistance programs, with origins in a 1983 decision by the CPUC, the ESA Program is one of the key assistance programs administered by the state's four largest investor-owned energy utilities. The ESA Program offers no-cost energy efficiency measures and non-energy benefits for income-qualified households. Services provided include attic insulation, energy-efficient refrigerators, energy-efficient furnaces, weather-stripping, caulking, low-flow showerheads, water heater blankets, and door and building envelope repairs that reduce air infiltration. In providing these energy efficiency and weatherization measures, the ESA Program is able to help low-income families reduce energy consumption and optimize a more efficient use of energy, while improving quality of life and comfort. Both participating and non-participating ratepayers fund the ESA Program via a surcharge on electric and gas utility bills. For each budget cycle, the CPUC approves budgets for, and directs the electric and gas IOU's administration of, the ESA Program.

Other Energy Assistance Programs. In addition to the ESA Program, there are additional assistance programs to help low-income customers. Most notably, the Low-Income Home Energy Assistance Program (LIHEAP) is a federally funded and program through the California Community Services Department that provides one-time emergency utility bill assistance for eligible customers of any electric or gas utility in the state. The LIHEAP also provides some weatherization assistance, although more limited than the ESA Program. The state budget has in previous years also provided some funding for energy assistance programs, largely for solar installations, through the greenhouse gas reduction fund. The CPUC also administers a number of programs that provide financial assistance, in many cases for solar other distributed energy resources including batteries. These programs include: the Self Generation Incentive Program and Solar on Multifamily

Affordable Housing. Nonetheless, the ESA Program is the longest serving with the most consistent budget of the programs to help low-income customers.

Low-income customer. Currently, the ESA Program defines low-income customers as those whose income falls at 200 percent of the federal poverty guidelines. The current definition is consistent with the definition used to define eligibility for the CARE (California Alternate Rates for Energy) rate assistance program administered by the state's IOUs which provides a discount of 20 to 35 percent on utility bills, depending on the utility. The table below denotes the current income guidelines as established for both programs:

ESA Program Income Guidelines	
Household Size	Income Eligibility Upper Limit
1-2	\$33,820
3	\$42,660
4	\$51,500
5	\$60,340
6	\$69,180
7	\$78,020
8	\$86,860
Each additional person	\$8,840
* Effective June 1, 2019 to May 31, 2020	

SB 1403. This bill adjusts the definition of “low-income” customer to account for cost-of-living differences by region as defined by a standard of living where the household is located. Specifically, this bill proposes to utilize the regulations established by the HCD via the guidelines established by the United States Housing and Urban Development Agency. Under those guidelines, HCD publishes annual income guidelines by county taking into consideration the average median income and defining low-income families as those whose incomes do not exceed 80 percent of the median family income for the area. Under this definition, the low-income customer would vary by region. As an example, for the most recent income guidelines published on April 30, 2020 [¹: a family of four in Butte County would meet an upper income limit of \$56,550, while a family of four in Sonoma County would meet an upper income limit of \$90,900 to satisfy the low-income definition.

¹ <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/Income-Limits-2020.pdf>

Comments

ESA Budgets. The proponents of this bill argue that an expansion of the definition of low-income customer is necessary to better account for the needs of struggling Californians and to ensure the benefits of the ESA Program can be afforded to these families. Many of the proponents are representatives of the contractors working in communities to implement ESA Program measures. These contractors note that in some regions of the state it has become more difficult to locate eligible customers under the current income definition, even though these customers also contribute towards funding the program. Additionally, the proponents note that ESA Program budgets often go unspent – at times with hundreds of millions of dollars remaining unexpended. The most recent budget numbers for the ESA Program confirm the proponents’ claims, as noted in the table below provided by the CPUC which provides a breakdown by the four administering electric and gas IOUs: Pacific Gas & Electric (PG&E), Southern California Edison (SCE), Southern California Gas (SCG), and San Diego Gas & Electric (SDG&E).

\$ in Millions	Authorized for 2017-2020 ^[1] (A)	Expended through March 2020 (B)	Remaining funds through March 2020 (C=A-B)	Estimated remaining funds by end of cycle (end of 2020) ^[2] (D)	Estimated remaining funding through June 30, 2021 ^[3] (E)
PG&E	\$704.9	(\$447.2)	\$257.7	\$178.1	\$48.9
SCE	\$380.8	(\$235.9)	\$144.9	\$62.4	\$21.5
SCG	\$761.9	(\$309.6)	\$452.3	\$0.0	\$0.0
SDG&E	\$142.3	(\$65.4)	\$76.9	\$4.1	\$4.1
Total	\$1,989.9	(\$1,058.1)	\$931.8	\$244.6	\$74.5

Impact on ratepayers. In opposition to this bill, the California Chamber of Commerce raises the concern that expanding the definition of the “low-income” customer for the ESA Program could result in increased costs to ratepayers. However, the expansion of the definition of low-income customer, in and of itself, may not guarantee increased costs to ratepayers, particularly when there are still unspent budgets for the program. Nonetheless, the Chamber raises a valid concern. However, the author and many of this bill’s proponents have stated their desire to

^[1] This includes unspent funds from previous program cycles.

^[2] These figures represent the remaining funds the IOUs would have had at the end of the program cycle, ending December 31, 2020, if not for the COVID-19 pandemic. The IOUs were mostly on track to reach the statutory goal of having treated all eligible and willing households, using the funds remaining in the program cycle (column C).

^[3] Includes IOU plans related to potential bridge funding in 2021 and offsetting collections from ratepayers throughout 2020 and 2021, as directed by D.16-11-022.

not increase costs on ratepayers and to maintain the amounts most recently authorized for each of the utilities.

Related/Prior Legislation

SB 350 (De León, Chapter 547, Statutes of 2016) enacted the "Clean Energy and Pollution Reduction Act of 2015," which establishes targets to increase retail sales of renewable electricity to 50 percent by 2030 and double the energy efficiency savings in electricity and natural gas end uses by 2030.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, the CPUC estimates ongoing costs of \$226,000 annually (special fund) for increased stakeholder participation, analysis of new program budgets, examination of new program rules, advice letter processing, commission rulings and decisions, and ongoing oversight.

SUPPORT: (Verified 6/18/20)

Energy Efficiency Council (source)
California Efficiency + Demand Management Council
El Concilio of San Mateo County
FCI Management
Highlands Energy
La Cooperativa Campesina de California
Marin Clean Energy
MAROMA Energy Services
Natural Resources Defense Council
Proteus Inc.
Quality Conservation Services
Reliable Energy Management
San Mateo County Board of Supervisors
Synergy Inc.
22 Individuals

OPPOSITION: (Verified 6/19/20)

Brea Chamber of Commerce
California Chamber of Commerce
Hesperia Chamber of Commerce
Lodi Chamber of Commerce
Oxnard Chamber of Commerce

San Gabriel Valley Economic Partnership
Southwest California Legislative Council
Victor Valley Chamber of Commerce

ARGUMENTS IN SUPPORT: According to the author:

SB 1403 will help ensure more of California's low-income families benefit from the energy savings and corresponding utility bill reduction provided by California's Energy Savings Assistance Program. By expanding the income eligibility to include cost of living considerations, more of California's families who are struggling financially will receive the benefits of the program, while also ensuring the hundreds of millions of dollars that currently go unspent will be utilized as budgeted. These investments will also benefit California's workforce and economy, as it struggles to recover from the recent COVID-19-induced stagnation; all while helping the state achieve its climate goals.

ARGUMENTS IN OPPOSITION: In opposition to this bill, the California Chamber of Commerce states its concerns for the potential increase in costs to ratepayers. The Chamber specifically requests the author consider amendments that ensure the expenditures of the program do not result in the need to pass along rate increases.

Prepared by: Nidia Bautista / E., U., & C. / (916) 651-4107
6/19/20 17:04:18

**** END ****

THIRD READING

Bill No: SB 1409
Author: Caballero (D)
Amended: 5/22/20
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 6-0, 5/21/20
AYES: McGuire, Beall, Hertzberg, Hurtado, Nielsen, Wiener
NO VOTE RECORDED: Moorlach

SENATE APPROPRIATIONS COMMITTEE: 7-0, 6/18/20
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

SUBJECT: Franchise Tax Board: California earned income tax credit: non-filer:
report

SOURCE: Economic Security Project Action
End Child Poverty in California/The GRACE Institute
Tipping Point Community

DIGEST: This bill requires the Franchise Tax Board (FTB) to analyze and develop a plan to implement a “non-filer” option to claim the Earned Income Tax Credit (EITC).

ANALYSIS:

Existing law:

- 1) Requires California taxpayers above specified adjusted gross income thresholds to file an income tax return with the FTB. Individuals with income below this amount need not file a return.
- 2) Allows a California EITC low-to-moderate income individuals and families. When EITC exceeds the amount of taxes owed, it results in a tax refund to those who claim and qualify for the credit.

- 3) Calculates the EITC based on a percentage of the taxpayer's earned income and number of dependents, and phases out the credit amount as income increases.
- 4) Requires an EITC recipient to file a California tax return to receive the credit.

This bill:

- 1) Requires FTB to analyze and develop a plan a study to the Legislature that would analyze and develop a plan to implement a “no return” or “non-filer” tax filing pilot program.
- 2) Permits FTB to engage any state agency task force or group that exists to reduce poverty and other stakeholders that work to reduce poverty.
- 3) Provides that the plan must have a goal to increase the number of taxpayers that claim the EITC.
- 4) States that the plan must include an overview of the changes needed to the income tax system to reduce barriers to tax filing for non-filers eligible for the EITC, and an outline of the necessary changes needed to increase collaboration and coordination among state agencies to reach the greatest number of individuals eligible for the EITC.

Background

In SB 80 (Committee on Budget and Fiscal Review, Chapter 21, Statutes of 2015), the Legislature created the EITC, a state refundable tax credit for wage income that is intended to benefit very low-income households. Specifically, the program builds off the federal EITC and established a refundable credit for tax years beginning on or after January 1, 2015. The credit is applied to personal income tax liabilities associated with earned wage income. The program provides for a credit amount during a phase-in range of earned wage income according to specified percentages based on the number of qualifying children.

In the Budget Act of 2019 (AB 74, Committee on Budget and Fiscal Review, Chapter 23, Statutes of 2019), the Legislature set aside \$10 million for state outreach grants to promote the California EITC and to promote free tax preparation. Grantees will carry out statewide and local outreach efforts aimed at reaching eligible families. Despite the availability of these resources, the California EITC is not being claimed at the legislature’s desired and anticipated rate.

In some cases, low-income individuals are not required to file a return because they do not need the minimum return filing income thresholds. Thus, many

California household do not receive the credits for which they are eligible, limiting the effectiveness of the EITC program.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, FTB indicates that this bill would result in minor and absorbable administrative costs. However, the bill would result in General Fund cost pressures to FTB, because any “no return” filing pilot program designed by the department would result in an increase to its administrative costs. Additionally, such a pilot program would increase the tax credit’s usage beyond what would have occurred on the natural, thus creating a General Fund “revenue pressure.”

SUPPORT: (Verified 6/18/20)

Economic Security Project Action (co-source)
End Child Poverty in California/The GRACE Institute (co-source)
Tipping Point Community (co-source)
Alliance for Boys and Men of Color
Asian Americans Advancing Justice
California Alternative Payment Program Association
California Association of Food Banks
California Lulac
Catholic Charities of Santa Clara County
Child Action Inc.
Children’s Defense Fund California
Children’s Institute Inc.
Friends Committee on Legislation of California
Gardner Family Health Network
Golden State Opportunity
Head Start California
Jewish Family Services of San Francisco
John Burton Advocates for Youth
Martin Luther King Jr Freedom Center
National Association of Social Workers, California Chapter
National Foster Youth Institute
San Diego for Every Child
Small Business California
South Bay Community Services
The Children’s Movement of Fresno
The Children’s Partnership

The Daughters of Charity
United Ways of California

OPPOSITION: (Verified 6/18/20)

None received

ARGUMENTS IN SUPPORT: According to the author, “The California EITC is one of California’s most important anti-poverty tools by improving the economic security of working families that struggle to make ends meet. California has made important investments in the credit and educational outreach to ensure eligible families become aware that they qualify for the California EITC. Many eligible families still fail to claim the credit. The COVID-19 pandemic and extreme economic downturn has highlighted the need for our hard working families to receive economic supports as efficiently and rapidly as possible. SB 1409 will help ensure all eligible working families receive the credit they have earned.”

Prepared by: Jessica Deitchman / GOV. & F. / (916) 651-4119
6/19/20 17:04:17

**** END ****

THIRD READING

Bill No: SB 1472
Author: Committee on Natural Resources and Water
Introduced: 3/5/20
Vote: 21

SENATE NATURAL RES. & WATER COMMITTEE: 7-0, 5/19/20
AYES: Stern, Jones, Allen, Caballero, Hertzberg, Hueso, Monning
NO VOTE RECORDED: Borgeas, Jackson

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Public resources: coastal resources and school lands

SOURCE: Author

DIGEST: This bill makes various consensus, or technical and clarifying changes to statute under the Senate Natural Resources & Water Committee's jurisdiction affecting the California Coastal Commission and State Lands Commission.

ANALYSIS:

Existing law:

- 1) Provides the following relative to governing the State Lands Commission:
 - a) Grants California with 5.5 million acres of land from the federal government to support public schools, known as "school lands", out of the 16th and 36th section in each township. (Public Resources Code (PRC) §7301)
 - b) Allows California to select replacement lands, termed "indemnity lands" or "lieu lands", from the federal government where the 16th and 36th section were not granted due to other public use or previous conveyance.
 - c) Allows the State Lands Commission to sell school lands and indemnity lands.

- d) Allows the State Lands Commission to sell indemnity scrip, which is the entitlement to indemnity lands in the event that they are acquired from the federal government at a later date.
 - e) Establishes the School Land Bank Fund which allows funds from land sales and operation to be used for the generation of revenue through:
 - i) Management and remediation efforts on school lands. (PRC §8709.5)
 - ii) Purchase of real property and associated acquisition expenses. (PRC §8709)
- 2) Provides the following relative to governing the California Coastal Commission:
- a) Encourages expansion of coastal-dependent industrial facilities within existing sites; however, new coastal sites can be expanded into if:
 - i) Alternate locations are more environmentally damaging.
 - ii) Expanding elsewhere would adversely affect public welfare.
 - iii) Adverse effects are mitigated to the maximum extent feasible. (PRC §30260 and §30263)

This bill is the Senate Natural Resources and Water Committee's 2020 natural resource omnibus bill. Specifically, this bill:

- 1) Reorganizes and consolidates language relating to the sale of school lands or indemnity lands.
 - a) Requires the sale of school lands to be in the best interest of the state.
 - b) Removes obsolete indemnity scrip language.
 - c) Provides no current contract, permit, lease, or agreement is affected by reorganization of sections or removal of scrip language.

- d) Allows the State Lands Commission to use the Land Bank Trust Fund for typical costs associated with the sale of school lands and indemnity lands such as escrow.
- 2) Makes minor grammatical and technical changes to the Coastal Act regarding expansion of coastal-dependent industrial facilities.

Background

In 1853, Congress granted the State of California 5.5 million acres of land to support public schools. These lands were designated in each township, consisting of 36 sections, as the 16th and 36th section. However, not every 16th and 36th section was available due to being previously conveyed or being reserved for another public use. As a result, out of the 5.5 million acres, approximately 132,643 acres of “base lands” were not initially granted. These lands still owed to the State required follow-up transfer from the U.S. Bureau of Land Management (BLM) through the use of “clear lists”. The lists contained specified base lands and an equivalent acreage of indemnity or lieu lands proposed by the state, which, when approved by the BLM, transferred the rights of base lands to the United States and the title of selected indemnity lands to the State Lands Commission. To date, roughly 81,643 acres of indemnity school lands have been acquired with 51,000 still owed to the State.

Comments

Obsolete Scrip Language and Sale of School Lands in General, In 1943, scrip language was added to law allow the State Lands Commission to sell indemnity scrip to interested purchasers of land in the event the state was able to acquire those lands from the federal government. While 51,000 acres of indemnity land is still owed to the state, scrip has not been issued in at least 50 years. According to the State Lands Commission, the process is no longer used because the typical method of obtaining indemnity lands has changed. In the past, a prospective purchaser could identify potential indemnity lands. If the State Lands Commission agreed to the proposal then an indemnity scrip would be given in exchange for payment, entitling the prospective purchaser to take the title to the future indemnity land. At present, the U. S. Bureau of Land Management notifies the state of surplus lands available for acquisition. The State Lands Commission then assesses these lands for consideration as indemnity lands, with those unselected continuing to sale or auction.

In addition to this change in indemnity land acquisition, scrip was issued under the premise of ongoing extensive sales of school and indemnity lands. However, the School Land Bank Act of 1984 realigned the directive of the State Lands Commission from policies which depleted land inventory to one of retention, management, and enhancement of school lands in the economic interest of the state.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/2/20)

State Lands Commission

OPPOSITION: (Verified 6/2/20)

None received

ARGUMENTS IN SUPPORT: According to the author:

“The 2020 Senate Natural Resources and Water Committee’s natural resources omnibus bill updates codified language to current practice and makes several noncontroversial and generally minor changes to statute. These include grammatical changes to the Coastal Act relating to coastal-dependent industrial facilities (California Coastal Commission), clarifying language related to sale of school and indemnity lands by the State Lands Commission, and removal of obsolete scrip language from the sale of indemnity lands by the State Lands Commission.”

Additionally, the State Lands Commission notes:

“SB 1472 would also clarify that repealing the obsolete indemnity scrip statutes does not affect vested rights or other contracts, leases or agreements entered into under any other provision of previous law. And that it does not affect the rights of any purchase of school lands sold before the effective date of the repeal.”

Prepared by: Grayson Doucette / N.R. & W. / (916) 651-4116
6/4/20 9:58:18

**** END ****

THIRD READING

Bill No: SCR 59
Author: Umberg (D), et al.
Amended: 6/12/20
Vote: 21

SUBJECT: Veterans of the Republic of Vietnam Armed Forces Day

SOURCE: Author

DIGEST: This resolution proclaim June 19, 2020, as Veterans of the Republic of Vietnam Armed Forces Day.

Senate Floor Amendments of 6/12/20 add a coauthor and make other technical and clarifying changes to the resolution.

ANALYSIS: This resolution makes the following legislative findings:

- 1) The Republic of Vietnam Military Forces, or South Vietnamese Armed Forces, were formally established on December 30, 1955, by Ngo Dinh Diem, the first President of South Vietnam.
- 2) The Republic of Vietnam Military Forces consisted of four branches: the Army of the Republic of Vietnam, the Republic of Vietnam Air Force, the Republic of Vietnam Navy, and the Republic of Vietnam Marine Division.
- 3) The duties of all four branches included: protecting the sovereignty of the free Vietnamese nation and that of the Republic, maintaining the political and social order and the rule of law by providing internal security, defending the newly independent Republic of Vietnam from external and internal threats, and ultimately, helping to reunify Vietnam, a country that had been divided since the Geneva Accords of 1954.
- 4) The Vietnam War brought about the loss of more than 250,000 members of the South Vietnamese Armed Forces and more than 58,000 members of the United States Armed Forces.

- 5) After the Fall of Saigon on April 30, 1975, more than 250,000 members of the South Vietnamese Armed Forces were sent to prison camps, where many spent 18 years or more in captivity and more than 20,000 died before they were released.
- 6) The end of the Vietnam War left the South Vietnamese Armed Forces in disarray. Many military personnel and their family members fled Vietnam to escape tyrannical authoritarian rule and oppression, and hoped to find democracy and freedom in the United States and other free nations. They spent months at sea and in jungles, battling hunger, thirst, and separation from their families and loved ones.
- 7) These veterans were fighting side by side with American soldiers against a common enemy and risked their lives to save many American lives. All veterans who risked their lives fighting for freedom should be honored for their distinguished service in the Vietnam War and for the contributions they provide to the United States as American citizens, and it is the intent of the State of California to honor the sacrifices, commitment, dedication, and courage of everyone who fought for the freedom of the Republic of Vietnam.

This resolution recognizes June 19, 2020, as Veterans of the Republic of Vietnam Armed Forces Day, in memory of the soldiers who sacrificed their lives for freedom and democracy and the victims of the Vietnam War, and in honor of the survivors, activists, and freedom fighters of that war.

Related/Prior Legislation

SCR 86 (Nguyen, Resolution Chapter 127, Statutes of 2018) proclaimed June 19, 2018, as Veterans of the Republic of Vietnam Armed Forces Day.

SCR 61 (Nguyen, Resolution Chapter 98, Statutes of 2017) proclaimed June 19, 2017, as Veterans of the Republic of Vietnam Armed Forces Day.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/12/20)

None received

OPPOSITION: (Verified 6/12/20)

None received

Prepared by: Karen Chow / SFA / (916) 651-1520
6/17/20 16:55:03

****** END ******

THIRD READING

Bill No: SCR 61
Author: Skinner (D), et al.
Amended: 1/8/20
Vote: 21

SUBJECT: Sister state relationships with Ethiopian regional states

SOURCE: EDGET at Silicon Valley

DIGEST: This resolution extends to the people of the regional states of Amhara, Oromia, Somali, the Southern Nations, Nationalities, and Peoples' Region, and Tigray an invitation to join with California in sister state relationships.

Senate Floor Amendments of 1/8/20 add a legislative finding to the resolution relating to the award of a Nobel Peace Prize to Prime Minister Abiy Ahmed Ali.

ANALYSIS: This resolution makes the following legislative findings:

- 1) The Ethiopian Embassy to the United States in Washington D.C. and the Ethiopian Consulate General in Los Angeles, which covers the western half of the United States, including California, as its consular district, have expressed interest in the creation of sister state relationships between the State of California and the Ethiopian regional states of Amhara, Oromia, Somali, the Southern Nations, Nationalities, and Peoples' Region, and Tigray.
- 2) Diplomatic relations between the United States and Ethiopia, dating back over a century to 1903, have grown from mere state-to-state relations to people-to-people relations with the presence of large Ethiopian diaspora communities in the United States, including in California.
- 3) The economic, political, and cultural relations between Ethiopia and the United States, driven by the excellent friendly relations between the two countries and the people-to-people relationships that continue to grow in leaps and bounds, need further consolidation through local government relationships in both countries.

- 4) California is one of the largest hosts of Ethiopian diaspora communities that can bridge and further consolidate the economic, political, and cultural relations between California and the aforementioned five Ethiopian regional states, particularly the regional state of the Southern Nations, Nationalities, and Peoples' Region and the regional state of Tigray.
- 5) The sister state relationships between California and key Ethiopian regional states will foster commerce, tourism, environmental protection and sustainable development, technological and educational advancement, and cultural and people-to-people relations that are the bedrock of the spirit of entrepreneurship and development of the two friendly nations.

This resolution extends to the people of the regional states of Amhara, Oromia, Somali, the Southern Nations, Nationalities, and Peoples' Region, and Tigray an invitation to join with California in sister state relationships in order to promote and assure mutually beneficial educational, economic, environmental, scientific, and cultural exchanges that will lead to a closer relationship between Californians and the citizens of these five key Ethiopian regional states.

Related/Prior Legislation

SR 90 (Pan, 2018) encouraged efforts to establish a sister state relationship between California and Baden-Württemberg. The resolution was adopted by the Senate.

SCR 3 (Lara, 2017-18) would have extended, on behalf of the people of the state, an invitation to the people of Cambodia to join California in a sister-state relationship. The resolution died on the Senate Inactive File.

SCR 81 (Lara, Resolution Chapter 185, Statutes of 2017) invited the State of Nayarit, Mexico, to join California in a sister state relationship.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 1/9/20)

EDGET at Silicon Valley (source)
California Black Agriculture Working Group

OPPOSITION: (Verified 1/9/20)

None received

ARGUMENTS IN SUPPORT: The sponsor of this resolution, EDGET at Silicon Valley, writes, “SCR 61 recognizes the historical, cultural, and diplomatic relations between the United States and Ethiopia, especially the presence of large Ethiopian diaspora communities in California. SCR 61 will create sister state relationships between California and key regional states, fostering collaboration in tourism, commerce, environmental protection and sustainable development, deeper cultural relations, and technological protection and sustainable development.”

Prepared by: Karen Chow / SFA / (916) 651-1520
1/10/20 10:22:06

****** END ******

THIRD READING

Bill No: AB 75
Author: Committee on Budget
Amended: 6/10/20 in Senate
Vote: 21

PRIOR VOTES NOT RELEVANT

SENATE BUDGET & FISCAL REVIEW COMMITTEE: 17-0, 6/12/20
AYES: Mitchell, Nielsen, Beall, Caballero, Dahle, Durazo, Leyva, McGuire,
Melendez, Monning, Moorlach, Morrell, Pan, Roth, Skinner, Stern, Wiecewski
NO VOTE RECORDED: Hurtado

SUBJECT: Budget Act of 2019: augmentation

SOURCE: Author

DIGEST: This bill makes a supplemental appropriation to the Budget Act of 2019.

ANALYSIS: This bill makes a supplemental appropriation to the Budget Act of 2019. Specifically, this bill appropriates \$115,419,000 General Fund to multiple state agencies for costs incurred during the 2019-2020 fiscal year.

- 1) Appropriates \$4.8 million General Fund to augment the 2019 Budget Act for the California Department of Forestry and Fire Protection (CAL FIRE). The amount includes the cost of back pay of cash-in-lieu-of benefits pursuant to a settlement with Bargaining Unit 8. The Ninth Circuit Court of Appeals ruled that “cash-in-lieu of benefits” payouts should be included in the base salary amounts that are used to calculate employees’ overtime compensation. Accordingly, CAL FIRE and California Department of Human Resources (CalHR) reached a settlement with Bargaining Unit 8 to provide back pay to affected employees. The \$4.8 million settlement agreement covers the calculated cost of planned and unplanned overtime hours for the period of November 2015 to June 2018. According to the Department of Finance, the overtime pay calculation has been corrected and CAL FIRE will absorb the

additional incremental cost associated with this calculation change within its existing baseline overtime budget.

- 2) Appropriates \$9.702 million General Fund to augment the 2019 Budget Act for the California Department of Corrections and Rehabilitation (CDCR) to conduct remediation work to control Legionella bacteria at the California Health Care Facility (CHCF) in Stockton. In April 2019, two inmates housed at CHCF tested positive for exposure to Legionella bacteria. One inmate passed away and a post-death analysis confirmed the presence of Legionella in the patient. CDCR consulted with the United State Centers for Disease Control, the California Department of Public Health and a contracted environmental consultant with water quality expertise. CDCR declared an emergency in accordance with Public Contract Code section 1102 and took action to control the Legionella bacteria at CHCF. The costs included \$8.5 million for operating expenses and equipment including shower trailer rentals, in-line water filters, a water testing contract, chlorination equipment rental, bottled water and other miscellaneous supplies for water fixture flushing and other maintenance activities. An additional cost of \$1.2 million was incurred for overtime for plant operations staff and custody staff.
- 3) Appropriates \$11.7 million General Fund to augment the 2019 Budget Act for the Department of General Services (DGS) to conduct ongoing response and recovery operations related to the 2018 Camp Fire in Butte County. Most of department's costs were reimbursed through Government Code section 8690.6, the Disaster Response-Emergency Operations Account (DREOA) and federal reimbursements from FEMA. However, due to the severity of the fire and the prolonged nature of the response and recovery efforts, DGS incurred additional costs that crossed fiscal years. The \$11.7 million includes contract work for relief activities that continued into 2019 including janitorial services, security services, RVs, canopies and tents, water truck services, tank and grey water removal services, heating, propane tank and delivery services, and standby medical and airport services.
- 4) Appropriates \$40.3 million General Fund to augment the 2019 Budget Act for the California Department of Food and Agriculture (CDFA) with an extended encumbrance to June 30, 2021. There are 77 fairs in California. Of those, 53 fairs are state-affiliated and have state civil servant employees. Due to the COVID-19 pandemic and the inability to conduct revenue-generating activities,

many fairs, if not all, are facing significant financial difficulty. According to the Administration, to address the loss of revenue, all of the fairs are developing financial plans which may include laying off employees. The state expects the layoff process to begin in June 2020. The \$40.3 million appropriated in this item is the estimated cost of employee compensation for the fairs that do not have sufficient funds or reserves to cover employee compensation costs during the layoff process. Under the projection, fair managers were expected to be laid off immediately. The remaining state civil servants are expected to go through the layoff process, incurring approximately 6 months of payroll expense. According to the Administration, fairs have lost approximately \$98 million in revenue between March and June 2020. As a result, fairs are either using their reserves to pay their employees or are having to layoff staff or a combination of both. In the end, the state is financially responsible for the employee compensation of the state civil servants and the \$40.3 million is the estimated cost of that obligation.

- 5) Appropriates \$17,000 General Fund to augment the 2019 Budget Act to reimburse Mariposa County for the costs related to the homicide case of “People v. Cary Stayner.” This claim has been approved by the State Controller, pursuant to Chapter 3 (commencing with Section 15200) of Part 6 of Division 3 of Title of the Government Code, which allows qualified counties to seek state reimbursement for homicide trial costs.
- 6) Appropriates \$48.9 million General Fund to augment the 2019 Budget Act for multiple departments that incurred costs associated with the 2019 wildfires and the public safety power shutoffs (PSPS). The Governor issued an emergency proclamation on October 25, 2019 for the counties of Sonoma and Los Angeles in response to the Kincadee and Tick Fires, respectively. In addition, the Governor issued another emergency proclamation on October 27, 2019, in anticipation of the public safety power shutoffs initiated by the Investor-Owned Utilities due to the extreme fire and wind conditions. As a result, Department of Finance directed all departments to report costs associated with the two emergencies.
 - a) This bill augments the following departments for costs incurred for the 2019 wildfires:

- i) Department of Transportation - \$6.8 million for off-state highway system asset repair and traffic controls during the evacuations.
 - ii) Department of the California Highway Patrol - \$1.286 million for traffic management overtime costs related to the wildfires.
 - iii) Department of Motor Vehicles - \$19,000 for customer support to assist in replacement of important government records, claims for insurance, and other purposes related to losses suffered from the wildfires.
 - iv) Department of Parks and Recreation - \$58,000 for the mobilization and deployment for fire response coordination and overtime costs for assistance with patrols for areas impacted by the fires.
 - v) Emergency Medical Services Authority - \$389,000 for the deployment of the California Medical Assistance Team (CalMAT) to provide care to patients and state personnel (e.g. firefighters) and overtime costs for staffing and logistical support.
 - vi) Department of Social Services - \$83,000 for the State Emergency Food Reserve.
 - vii) Department of Corrections and Rehabilitation - \$122,000 for wildfire suppression activities, including the use of CDCR state employee strike teams and equipment for both direct wildfire suppression and structure protection.
 - viii) Department of General Services - \$6.457 million for overtime for emergency staff, laundry and shower units, sanitation rentals and transport, bio-cleaning for shelters, water and fuel infrastructure, comfort kits, unarmed security services, and other equipment and commodities.
 - ix) California Military Department - \$2.979 million for the deployment of staff and resources to assist with evacuations, patrols, and providing/distributing life sustaining goods to populations affected/displaced by the fires.
- b) This bill augments the following department for the costs incurred for the 2019 public safety power shutoffs:
- i) Department of Social Services - \$6 million for county Adult Protective Services social workers to conduct wellness checks of seniors during the public safety power shutoff and resources to reimburse and replenish the State Emergency Food Reserve, which provides shelf stable and ready to eat food for immediate use in response to emergencies.

c) This bill augments the following department for the costs incurred for 2019 wildfires and public safety power shutoffs:

i) Office of Emergency Services (Cal OES) - \$24.717 million

- (1) The PSPS-related costs were for the State Operations Center and regional response activity costs incurred by Cal OES for activations in response to the power shutoff events.
- (2) Cal OES' wildfire costs were made up of two components: (1) reimbursing local California fire companies for incident responses that were directed by Cal OES, but were outside of the mutual aid agreements; and (2) reimbursing the costs for out of state engines that provided mutual aid through the Emergency Management Assistance Compact (EMAC). Oregon, Washington, Montana, Utah, New Mexico, and Idaho each responded—sending a combined total of 150 engines to assist the state in suppressing the fires.

FISCAL EFFECT: Appropriation: Yes Fiscal Com.: Yes Local: No

According to the Senate Budget and Fiscal Review Committee, this bill appropriates \$115,419,000 General Fund to address shortfalls in the Budget Act of 2019. Balances of the appropriated funds as of June 30, 2020 as specified, would revert to the General Fund except as provided for the augmentation for CDFA.

SUPPORT: (Verified 6/11/20)

None received

OPPOSITION: (Verified 6/11/20)

None received

Prepared by: Hans Hemann / B. & F.R. / 916-651-4103
6/18/20 12:15:49

**** END ****

THIRD READING

Bill No: AB 240
Author: Irwin (D), et al.
Amended: 5/26/20 in Senate
Vote: 21

SENATE VETERANS AFFAIRS COMMITTEE: 7-0, 6/11/19
AYES: Archuleta, Grove, Hurtado, Nielsen, Roth, Umberg, Wilk

SENATE GOVERNMENTAL ORG. COMMITTEE: 15-0, 7/9/19
AYES: Dodd, Wilk, Allen, Archuleta, Bradford, Chang, Galgiani, Glazer, Hill,
Hueso, Jones, Nielsen, Portantino, Rubio, Wiener
NO VOTE RECORDED: Borgeas

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 76-0, 5/2/19 (Consent) - See last page for vote

SUBJECT: Veterans' homes: lease of property

SOURCE: Author

DIGEST: This bill limits the term of a lease of real property at a California Department of Veterans Affairs (CalVet) Veterans' Home to five years, except under specified conditions; and requires that any use of property by a third party at a Veterans' Home meet specified criteria.

Senate Floor Amendments of 5/26/20 remove the authorization for the Director of the Department of General Services (DGS), with the consent of the Secretary, to enter into leases of any real property held by the department for a home, and not needed for any immediate purpose of the home, with any party for the development of housing, including affordable or mixed-income housing.

Senate Floor Amendments of 9/3/19 remove references to "long-term care facility."

ANALYSIS:

Existing law:

- 1) Establishes the Veterans' Home of California system for the operation of Veterans' Homes at various sites throughout the state.
- 2) Sets forth the duties of the CalVet regarding the administration and regulation of Veterans' Homes.
- 3) Authorizes the Director of DGS to lease or let any real property held by the department for a home, as specified, to any entity or person upon terms and conditions determined to be in the best interests of the home.
- 4) Authorizes the Director of DGS, as specified, to let for any period of time any real property or interest in real property which belongs to the state, when the director deems the letting serves a beneficial public purpose limited to the development of housing, including emergency shelters, or park and recreation facilities

This bill:

- 1) Prohibits a lease of a real property held by CalVet for a home from exceeding a term of five years, unless:
 - a) The lessee is a town, city, county, or city and county, or a political subdivision thereof, where the home is located.
 - b) The lessee is a nonprofit organization that provides services exclusively for veterans of the Armed Forces of the United States and their families.
 - c) The contract for the lease with CalVet or DGS was executed before January 1, 2021.
- 2) Authorizes a lease that was executed before January 1, 2021, to be renegotiated, however, any terms regarding the duration of the renewal of the contract shall not be extended.
- 3) Provides that a lease contract with any other party may be granted for a term greater than five years only with the approval of the Legislature.

- 4) Requires that any use, other than an easement, of real property held by CalVet for a home by a person or entity, as specified, must meet all of the following, as determined by the secretary:
 - a) Provide substantial and direct benefits to the home and its members.
 - b) Be appropriate and compatible with the nature of the home.
 - c) Compensate CalVet in an amount that approximates fair market value, taking into consideration the value of the benefit provided to the home's members and the investment by the lessee in the property development of the home.
 - d) That where the use contemplated carries a reasonable risk of injury or loss to the state, the home, or the members of the home, the use is appropriately insured by the lessee to cover those risks and to insure home residents, the department, and the State against liability.
- 5) Requires that any use, other than an easement, of real property held by CalVet for a home by a person or entity, as specified, be governed by a written agreement between CalVet or DGS and the person or entity using the real property, as specified.
- 6) States that the act is not intended to override or interfere with Section 14671.2 of the Government Code.
- 7) Defines "Member" as a veteran or nonveteran spouse or domestic partner who has been admitted by the department to reside at a home or receives services from the department at a home.

Background

CalVet oversees eight veterans' homes across the state. The homes provide rehabilitative, residential and medical services to the veterans who reside there. Any veteran who is disabled or over 55 years of age and a resident of California is eligible to apply for admission to the homes. Each home provides different levels of care, including skilled nursing care and memory care. The homes also range in size. The Lancaster home can house 60 residents on a 20 acre site while the largest home, the Yountville home (Yountville) in Napa County, can house up to 1,000 residents on a site that covers several hundred acres.

DGS has general authority to lease state owned real property, including veterans' home properties, with the consent of the agency responsible for the property. DGS has specific authority to lease veterans' home property as long as the property is

not needed for any direct or immediate purpose and the terms and conditions of the lease are in the best interests of the home.

In January 2019, the California State Auditor released an audit of CalVet and DGS subtitled “The Departments’ Mismanagement of the Veterans Home Properties Has Not Served the Veterans’ Best Interests and Has Been Detrimental to the State.” The Auditor recommended to the legislature that “to prevent future leases of veterans home property that obligate the property to third parties for unnecessarily extended periods of time, the Legislature should amend state law to clarify that leases of veterans home property may not exceed five years unless a statutory exception applies.”

The Yountville home has entered into long-term arrangements with the County of Napa and the Town of Yountville that involve mutual provision of services, investment of public funds and operation of facilities that do provide benefits to the home and its members. Specifically, the Town of Yountville has made an investment of more than \$2 million in the update and maintenance of the pool as part of a long-term arrangement with the home that has now been rendered void because the contract was executed without the approval of DGS. In negotiation over a new lease, the Town has balked at the imposition of the five-year limit, stating that its investment and the operating deficit of the pool does not make sense for them to take on with such short terms.

Some lessees hold leases that will not expire for decades. Additionally, their terms are extremely unfavorable to the state, as the auditor has detailed. CalVet is attempting to renegotiate some of these leases, but the lessees have virtually no incentive to agree to remuneration terms more favorable to the state at the same time that they are also required to cut decades from their existing arrangements. These leases, of the museum and the golf course, for example, also involve substantial investment by the leasing parties to develop the properties they are now using. This bill will clarify the law with regard to the five-year limit, but also provide flexibility to CalVet to restructure some of its least favorable, longest-term contracts.

[NOTE: See the Senate Veterans Affairs Committee analysis for detailed background of this bill.]

Comments

According to the author, “The property upon which the Yountville Veterans Home now stands was deeded under the state under clear terms: ‘...the support, maintenance and well-being of aged and infirm United States ex-soldiers, sailors

and Marines.’ And yet repeated audits of the Yountville Home have found that it is almost inexorably put to uses that not only have nothing to do with veterans, but run counter to the interests of the home and the people who live there. By resolving the ambiguity in current law about lease terms, while also providing flexibility under specific conditions, this bill provides a better foundation for ensuring the homes are chiefly operated for the benefit of their members, as well as the communities to which these homes belong, without compromising the interests of California veterans or the well-being of the home’s members.”

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 6/2/20)

AMVETS-Department of California
California Association of County Veterans Service Officers
Military Officers Association of America

OPPOSITION: (Verified 6/2/20)

None received

ASSEMBLY FLOOR: 76-0, 5/2/19

AYES: Aguiar-Curry, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Arambula, Grayson, Mullin, Quirk

Prepared by: Veronica Badillo / V.A. / (916) 651-1503
6/2/20 9:09:16

**** END ****

THIRD READING

Bill No: AB 1007
Author: Jones-Sawyer (D)
Amended: 6/25/19 in Senate
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 4-1, 6/19/19
AYES: Hill, Jackson, Mitchell, Pan
NOES: Morrell

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/30/19
AYES: Portantino, Bradford, Durazo, Hill, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 54-18, 5/28/19 - See last page for vote

SUBJECT: State Civil Service Act: adverse action: notice

SOURCE: California Correctional Supervisors Organization, Inc.

DIGEST: This bill amends the state civil service adverse action process by requiring a state employer to provide notice of an adverse action to a state employee within one year of the discovery of the employee's alleged misconduct for the adverse action to be valid, except as specified.

ANALYSIS:

Existing law:

- 1) Defines "adverse action" for purposes of state employment as dismissal, demotion, suspension or other disciplinary action (Government Code §19570).
- 2) Authorizes an appointing power (i.e., the state employer) to take adverse action against a state employee for specified causes of discipline and establishes

administrative procedures for review of an adverse action by the State Personnel Board (GC §19571 et seq.).

- 3) Requires the state employer to serve notice of an adverse action, as specified, against a state employee for any cause for discipline within three years of the cause for discipline, i.e. from its *occurrence* not the discovery of the occurrence (GC §§19574 and 19635).
- 4) Specifies that in cases of fraud, embezzlement, or falsification of records, the state employer has three years after the *discovery* of the activity to serve notice to the state employee (GC §19635).
- 5) Provides additional protections from adverse action to state firefighters and peace officers and by prohibiting the state employer from taking any punitive action against the employee from any investigation of any misconduct if the employer does not complete the investigation within one year of *discovery* of the misconduct (GC §§3254 and 3304).

This bill:

- 1) Prohibits any adverse action against a state employee for a civil service cause for discipline discovered on or after January 1, 2020, unless the employer serves notice of the adverse action *within one year* after the first occurrence of the cause for discipline (i.e., regardless of when the misconduct was discovered) except for specified misconduct (see below).
- 2) Maintains the existing distinct requirement that a state employer provide notice of the adverse action to the employee within three years of *discovery* of the misconduct for cases of fraud, embezzlement, or falsification of records.
- 3) Adds the following misconduct to cases for which the state employer must provide the employee notice of adverse action within three years of discovery of the misconduct:
 - a) Sexual assault; and
 - b) A cause for discipline that is the subject of a criminal investigation or criminal prosecution for a felony.

Related/Prior Legislation

SB 646 (Galgiani, 2017) would have prohibited an adverse action based on a cause for discipline discovered on or after January 1, 2018, from being valid against any state employee for any cause for discipline based on any civil service law of California, unless the employer served notice of the adverse action within one year after the cause for discipline, excluding actions of fraud, embezzlement or falsification of records. This bill died on the Assembly Inactive File.

AB 769 (Jones Sawyer, 2015) would have required that any adverse action taken against a state employee for any cause for discipline, other than for fraud, embezzlement, or the falsification of records, or the unauthorized accessing or disclosure of confidential tax information be served, and the investigation completed, within one year after the cause of discipline arose. Governor Brown vetoed the bill and stated that:

I am unwilling to reduce longstanding civil service adverse action timeframes because it may take state agencies longer than a year to investigate and serve adverse actions in complex cases involving employee misconduct or unsatisfactory work performance. Further, this bill hinders the progressive discipline process which is intended to give employees a reasonable amount of time to correct problems at an early stage. As such, this bill makes it more difficult for the state to manage and ensure the integrity of its workforce.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, the bill could result in unknown, potentially significant costs, to state departments related to accelerating the adverse action process (General and special funds).

SUPPORT: (Verified 6/12/20)

California Correctional Supervisors Organization, Inc. (source)
Association of California State Supervisors
California Association of Psychiatric Technicians
Professional Engineers in California Government

OPPOSITION: (Verified 6/12/20)

None received

ARGUMENTS IN SUPPORT: According to the California Correctional Supervisors Organization, Inc., “Under current law, there is an unreasonable large window of time – three years – for state agencies to take action against an employee after the alleged wrongdoing has been initially discovered. This long time-frame raises serious due process issues and makes it difficult for an employee to defend their actions, since witnesses who might support their position may be no longer available after such an extended period of time has elapsed.”

ASSEMBLY FLOOR: 54-18, 5/28/19

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooper, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Chen, Choi, Cunningham, Dahle, Diep, Flora, Fong, Gallagher, Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte, Patterson, Voepel

NO VOTE RECORDED: Cooley, Daly, Eggman, Frazier, Eduardo Garcia, Gray, Ting, Waldron

Prepared by: Glenn Miles / L., P.E. & R. / (916) 651-1556
6/12/20 13:27:43

**** END ****

THIRD READING

Bill No: AB 1185
Author: McCarty (D)
Introduced: 2/21/19
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 6-1, 7/2/19
AYES: Skinner, Moorlach, Bradford, Jackson, Mitchell, Wiener
NOES: Morrell

ASSEMBLY FLOOR: 43-23, 5/29/19 - See last page for vote

SUBJECT: Officer oversight: sheriff oversight board

SOURCE: Author

DIGEST: This bill authorizes counties to establish sheriff oversight boards, either by action of the board of supervisors or through a vote of county residents. This bill authorizes a sheriff oversight board to issue a subpoena when deemed necessary to investigate a matter within the jurisdiction of the board. This bill authorizes a county to establish an office of the inspector general to assist the board with its supervisory duties.

ANALYSIS:

Existing law:

- 1) Grants the Attorney General direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. (Cal. Const. Art. V, § 13.)

- 2) States that the Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county. (Cal. Const., Art. XI, § 1, subd. (b).)
- 3) States that for its own government, a county or city may adopt a charter by majority vote of its electors voting on the question. The provisions of a charter are the law of the State and have the force and effect of legislative enactments. (Cal. Const., Art. XI, § 3, subd. (a).)
- 4) States that county charters shall provide for a governing body of five or more members, elected (1) by district or, (2) at large, or (3) at large, with a requirement that they reside in a district. (Cal. Const., Art. XI, § 4, subd. (a).)
- 5) States that county charters shall provide for an elected sheriff, an elected district attorney, an elected assessor, other officers, their election or appointment, compensation, terms and removal. (Cal. Const., Art. XI, § 4, subd. (c).)
- 6) States that county charters shall provide for the powers and duties of governing bodies and all other county officers, and for consolidation and segregation of county officers, and for the manner of filling all vacancies occurring therein. (Cal. Const., Art. XI, § 4, subd. (e).)
- 7) Provides that the board of supervisors shall supervise the official conduct of all county officers, and officers of all districts and other subdivisions of the county, but that in doing so, the board of supervisors shall not obstruct the investigative function of the sheriff of the county nor shall it obstruct the investigative and prosecutorial function of the district attorney of a county. (Gov. Code, § 25303.)
- 8) Provides that whenever a county board of supervisors deems it necessary or important to examine any person as a witness upon any subject or matter within the jurisdiction of the board, or a document in the possession or under the control of the person or officer relating to the affairs or interests of the county, the chairman of the board shall issue a subpoena, commanding the person or officer to appear before it, at a time and place therein specified, to be examined as a witness. (Gov. Code, § 25170.)
- 9) Defines a subpoena as a writ or order directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. It may also require a witness to bring any books, documents, electronically stored information, or other things under the witness's control which the witness is bound by law to produce in evidence. (Code Civ. Proc., § 1985, subd. (a).)

- 10) Establishes procedures for the issuance of subpoenas and subpoenas duces tecum. Code Civ. Proc., §§ 1985 – 1985.8.)
- 11) Grants the power to issue subpoenas to civil service commissions. (Gov. Code § 31110.2.)
- 12) Grants the power to issue subpoenas to the coroner. (Gov. Code § 27498.)
- 13) Grants the power to issue subpoenas to retirement boards. (Gov. Code § 31535.)

This bill:

- 1) States that a county may create a sheriff oversight board, either by action of the board of supervisors or through a vote of county residents, comprised of civilians to assist in the board's supervisory duties over the sheriff.
- 2) Provides that the members of the sheriff oversight board shall be appointed by the board of supervisors. The board of supervisors shall designate one member to serve as the chairperson of the sheriff oversight board.
- 3) States that the chair of the sheriff oversight board shall issue a subpoena or subpoena whenever the board deems it necessary or important to examine the following:
 - a) Any person as a witness upon any subject matter within the jurisdiction of the board.
 - b) Any officer of the county in relation to the discharge of their official duties on behalf of the sheriff's department.
 - c) Any books, papers, or documents in the possession of or under the control of a person or officer relating to the affairs of the sheriff's department.
- 4) Provides that if a witness fails to attend, or in the case of a subpoena, if an item is not produced as set forth therein, the chair or the chair authorized deputy issuing the subpoena upon proof of service thereof may certify the facts to the superior court in the county of the board.
- 5) Provides that the court shall thereupon issue an order directing the person to appear before the court and show cause why they should not be ordered to comply with the subpoena. The order and a copy of the certified statement shall

be served on the person and the court shall have jurisdiction of the matter.

- 6) Specifies the same proceedings shall be had, the same penalties imposed, and the person charged may purge themselves of the contempt in the same way as in a case of a person who has committed a contempt in the trial of a civil action before a superior court.
- 7) States that a county, through action of the board of supervisors or vote by county residents, may establish an office of the inspector general, appointed by the board of supervisors, to assist the board of supervisors with its supervisory duties over the sheriff.
- 8) Specifies the inspector general shall have the independent authority to issue subpoenas.
- 9) Provides that the exercise of powers under this section or other investigative functions performed by a board of supervisors, sheriff oversight board, or inspector general vested with oversight responsibility for the sheriff shall not be considered to obstruct the investigative functions of the sheriff.
- 10) Makes the following findings and declarations:
 - a) County sheriffs lead agencies of law enforcement officers that are vested with extraordinary authority, and the powers to detain, search, arrest, and use deadly force. These officers are also responsible for the safety and welfare of the more than 75,000 incarcerated individuals in California's jail system. Misuse of these authorities can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, and significant public unrest.
 - b) While sheriffs are independently elected officials, boards of supervisors have the authority to supervise these officials and investigate the performance of their duties and have an obligation to ensure sheriffs and their departments uphold and respect people's constitutional rights.
 - c) Meaningful independent oversight and monitoring of sheriffs' departments increases government accountability and transparency, enhances public safety, and builds community trust in law enforcement. Such oversight must have the authority and independence necessary to conduct credible and thorough investigations.

- d) It is the intent of the Legislature in adding this section to the Government Code to ensure that every county in the state may adopt effective independent oversight of the sheriff of that county, and this section is not intended to limit the powers of any independent oversight entity.

Background

There are two types of counties in California. There are “charter counties,” which have adopted a charter for the governance of their county pursuant to a procedure laid out in the California Constitution. On the other hand, there are “general law counties” which have not adopted a charter and instead rely on the general law of the state for governance.

General law counties adhere to state law as to the number and duties of county elected officials. Charter counties have a limited degree of “home rule” authority that may provide for the election, compensation, terms, removal and salary of the governing board; for the election or appointment (except the sheriff, district attorney, and assessor who must be elected), compensation, terms and removal of all county officers; for the powers and duties of all officers; and for consolidation and segregation of county offices. A charter does not give county officials extra authority over local regulations, revenue-raising abilities, budgetary decisions or intergovernmental relations.

A county may adopt, amend or repeal a charter with majority voter approval. Once a charter has been properly enacted, the provisions of a charter are the law of the state and have the force and effect of legislative enactments. There are currently 14 charter counties in California: Alameda, Butte, El Dorado, Fresno, Los Angeles, Orange, Placer, Sacramento, San Bernardino, San Diego, San Francisco, San Mateo, Santa Clara, and Tehama. The other 44 counties are general law counties.

A subpoena is a writ used to summon witnesses before a court or other deliberative body. A subpoena “duces tecum” is a specific type of subpoena that is used to require a witness to present documents and records to the deliberative body. In 1994, the Supreme Court of California weighed in on the authority of a county to establish civilian, law-enforcement oversight boards and bestow such boards with subpoena power. (*Dibb v. County of San Diego*, (1994) 8 Cal. 4th 1200.) The *Dibb* case dealt specifically with the County of San Diego, a charter county, and looked to the California Constitution, statutory law, as well as the county charter itself before determining that San Diego County could lawfully establish such an

oversight board and also grant that board the power of subpoena. (*Id.*)

In *Dibb*, the Court quickly determined that the California Constitution grants to the counties the authority to create a civilian law-enforcement review board, irrespective of whether it is a charter county or a general law county. (*Id.*, at 1207-08.) The Court then looked at whether the County could also grant the law-enforcement oversight board the ability to issue a subpoena. In making that determination, the Court first looked to see whether the Legislature had granted counties the authority to vest oversight boards with subpoena power statutorily. (*Id.* at 1210.) The Court found that, at the time, that there was no such statutory authority. Regardless, the court ruled in favor of San Diego County, finding that the county charter could establish such subpoena power, even in the absence of statutory authority.

The clear implication of the Court's decision is that the Legislature can in fact grant such subpoena power to oversight boards through the county. In fact, the Court cited to a variety of instances in which Legislature has granted subpoena power to county entities. (*Id.*) This bill codifies *Dibb* to the extent that it applies to charter counties, providing statutory authority for that which a county is already able to do under its own charter. In addition, this bill clarifies that general law counties have the statutory authority to create sheriff-specific oversight boards and inspector general offices that both have statutory subpoena power.

In 2017, Sacramento Sheriff Deputies shot and killed Mikel McIntyre, following a 911 call. According to local reporting, there were discrepancies in the accounts given by the sheriffs. Deputies who responded to the call and McIntyre's mother, who was with her son at the time of the shooting.

As a result of those incidents, the county authorized an inspector general to perform an independent report and investigation of the shooting. Local reporting describes a disagreement between the Sacramento County Sheriff, Scott Jones, and the, now former, County Inspector General, Rick Braziel. As a result of Inspector General Braziel's report, Sheriff Jones prohibited the inspector general from access to sheriff facilities and records and called for his ouster. The disagreement between Jones and Braziel has continued into 2019, and appears to be ongoing.

It is a fundamental principle of good government in the United States of America that checks and balances are important in order to provide effectiveness and transparency. This bill seeks to add additional checks and

balances to counties in California. This bill permits the legislative body of a county, a board of supervisors, to investigate the activities of an executive body of the county, the county sheriff. Additionally, the board of supervisors could appoint an inspector general for that purpose.

This bill provides statutory authority to general law counties that wish to establish sheriff oversight boards and inspector general offices, and give general law counties the ability to equip those entities with subpoena power.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 6/12/20)

American Civil Liberties Union of California
California Attorneys for Criminal Justice
California Civil Liberties Advocacy
California Immigrant Policy Center
California League of Women Voters
California Public Defenders Association
National Association of Social Workers-California
Oakland Privacy
Together We Will-Contra Costa

OPPOSITION: (Verified 6/12/20)

California State Sheriffs' Association
Riverside County Sheriff's Department

ARGUMENTS IN SUPPORT: According to the American Civil Liberties Union of California:

“County sheriffs lead agencies of law enforcement officers that are vested with extraordinary authority, and the powers to detain, search, arrest, and use deadly force. These officers are also responsible for the safety and welfare of the more than 75,000 incarcerated individuals in California’s jail system. Misuse of these authorities can lead to grave constitutional violations, harms to liberty and the inherent sanctity of human life, and significant public unrest.

“Meaningful independent oversight and monitoring of sheriffs’ departments increases government accountability and transparency, enhances public safety, and builds community trust in law enforcement. Such oversight must

have the authority and independence necessary to conduct credible and thorough investigations.

“California law clearly states that boards of supervisors “shall supervise the official conduct of all county officers” and “shall see that they faithfully perform their duties, direct prosecutions for delinquencies, and when necessary, require them to renew their official bond, make reports and present their books and accounts for inspection.” (Gov. Code § 25303). Case law further establishes that this supervisory authority is not limited to fiscal matters; rather, the “operations... and the conduct of employees of those departments... are a legitimate concern of the board of supervisors,” as is “the performance of the sheriff’s department, including the conduct of its officers when investigating crime.” Furthermore, it is clear that charter counties can grant subpoena powers to civilian review boards, even recognizing that supervisors “shall not obstruct the investigative function of the sheriff” (Gov. Code § 25303).

“Nevertheless, in some counties, there is a lack of clarity over whether Boards of Supervisors and the entities they appoint to oversee sheriff’s departments, including inspectors general and civilian review boards, are empowered to actually hold them accountable. Some counties have wrongfully interpreted parallel investigations into sheriff’s departments as “obstruction” or made the assumption that they do not have the authority to subpoena the sheriff.”

ARGUMENTS IN OPPOSITION: According to the California State Sheriffs’ Association:

“This bill is unnecessary. Despite the fact that this bill appears based on the faulty premise that sheriffs are subject to the direct supervision of the board of supervisors, the opportunity to establish civilian oversight over the Office of the Sheriff has been exercised by several jurisdictions. Counties across the state have created civilian oversight boards and at least one inspector general office without this measure or specific authorization.

“Further, county counsels and grand juries already hold subpoena powers. Compelling the production of information, testimony, or documents from a wide array of sources can already occur through existing avenues.

“Specifying this authority in statute will create undue pressure within county governments to create an adversarial relationship with another county office.

AB 1185 also potentially codifies language that creates constitutional separation of powers issues.”

ASSEMBLY FLOOR: 43-23, 5/29/19

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner
Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu,
Eggman, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Holden,
Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Low, Maienschein, McCarty,
Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Reyes, Luz Rivas,
Santiago, Mark Stone, Ting, Weber, Wicks, Rendon

NOES: Bigelow, Chen, Choi, Cunningham, Dahle, Diep, Flora, Fong, Frazier,
Gallagher, Irwin, Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte,
Patterson, Petrie-Norris, Ramos, Salas, Voepel, Waldron

NO VOTE RECORDED: Brough, Cooley, Cooper, Daly, Eduardo Garcia, Gray,
Grayson, Limón, Quirk-Silva, Robert Rivas, Rodriguez, Blanca Rubio, Smith,
Wood

Prepared by: Gabe Caswell / PUB. S. /
6/12/20 11:22:18

**** END ****

THIRD READING

Bill No: ACA 14
Author: Gonzalez (D), et al.
Amended: 8/30/19 in Senate
Vote: 27

SENATE EDUCATION COMMITTEE: 6-0, 7/10/19
AYES: Leyva, Wilk, Chang, Durazo, McGuire, Pan
NO VOTE RECORDED: Glazer

SENATE ELECTIONS & C.A. COMMITTEE: 4-1, 8/20/19
AYES: Umberg, Hertzberg, Leyva, Stern
NOES: Nielsen

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/30/19
AYES: Portantino, Bradford, Durazo, Hill, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 23-12, 9/13/19 (FAIL)
AYES: Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Durazo, Galgiani,
Lena Gonzalez, Hill, Hueso, Hurtado, Leyva, McGuire, Mitchell, Pan,
Portantino, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NOES: Bates, Borgeas, Dahle, Dodd, Glazer, Grove, Hertzberg, Jones, Moorlach,
Morrell, Nielsen, Stone
NO VOTE RECORDED: Allen, Jackson, Monning, Roth, Rubio

ASSEMBLY FLOOR: 57-12, 6/24/19 - See last page for vote

SUBJECT: University of California: support services: equal employment
opportunity standards

SOURCE: AFSCME Local 3299

DIGEST: This constitutional amendment proposes to amend Article IX of the State Constitution by adding Section 9.5, the University of California (UC) Equal Employment Opportunity Standards Act, requiring the Regents of the UC to ensure that all contract workers who are paid to perform support services are afforded the same equal employment opportunity standards as university employees performing similar services.

ANALYSIS:

Existing constitutional law:

- 1) Establishes the UC as a public trust under the administration of the Regents.
- 2) Grants to the Regents all the powers necessary or convenient for the effective administration of this public trust.
- 3) Provides that the Regents are subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services.
- 4) Provides that the Regents are comprised of seven ex officio members, as specified, 18 appointive members appointed by the Governor and approved by the Senate, a majority of the membership concurring, and permits a student representative if appointed by the Regents.

This constitutional amendment:

- 1) Enacts the UC Equal Employment Opportunity Standards Act to require that the Regents ensure that all contract workers who are paid to perform support services, as defined, for students, faculty, patients, or the general public at any campus, dining hall, medical center, clinic, research facility, laboratory, or other university location, are subject to and afforded the same equal employment opportunity standards, as defined, as university employees performing similar services.
- 2) Defines support services as including but not necessarily limited to, all of the following: cleaning or custodial services; food services; groundskeeping; building maintenance; transportation; security services; billing and coding

services; sterile processing; hospital or nursing assistant services; medical imaging or respiratory therapy technician services; and other patient care technical and service bargaining unit work, as defined.

- 3) Provides that the Regents, or any campus or other entity of the UC, may contract for labor to perform support services only if authorized to do so by statute, and only for limited exceptions that include, among other things, a bona fide emergency circumstance or unanticipated special event, as specified, a student housing development, as specified, or to provide licensed, clinically trained workers.
- 4) Requires that any contractual arrangement for a person, firm, or other entity to supply the university with contract labor for one of the exceptions specified above shall not cause or facilitate the displacement of university employees, as defined.
- 5) Provides that nothing precludes the UC from using per diem university employees to complement career or limited term university employees when necessary for staffing levels for temporary or emergency periods.
- 6) Requires that each proposal and the resulting contractual arrangement, and documentation, as specified, shall be, at all times, available to the public.
- 7) Requires that such documentation shall specify that all persons who perform support services under the contractual arrangement shall be compensated in an amount equivalent to the hourly wage rate and the value of benefits provided to university employees who perform the same or similar work or duties on a full-time basis.

Comments

- 1) *Need for the constitutional amendment.* According to the author, “In recent years, the UC has increasingly replaced employees that provide critical support services for the university and its medical centers, with an estimated 7,000 support jobs outsourced by the UC. In response to critiques of UC outsourcing practices, the university established two separate, but interacting, policies that relate to 1) UC outsourcing and employee displacement and 2) minimum wage standards for outsourced workers, known as ‘Fair Wage/Fair Work Plan’.

“As a result of the outsourcing practices of the UC, the economic disparities faced by outsourced, low-wage workers become especially clear. Despite UC policies that aim to mitigate negative impacts, the UC continues to show disregard for its own policies and institutes policies that have significant deficiencies.”

- 2) *Related Study.* According to a 2012 study by the UC Berkeley Labor Center, *Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, almost one-quarter of a million people worked in the temporary help services industry in California in 2010. These workers were slightly younger, more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or GED than the average non-temp worker. These workers were also more susceptible to workplace illness and injury, earned less than their non-temp counterparts, and were less likely to get benefits. The report notes that lowered wages mean that these workers rely more on the state safety net than their direct-hire counterparts and that these employment arrangements undermine worker protections by allowing employers to avoid certain provisions of worker protection and making it difficult to enforce other protections. The report also notes that these employment relationships create downward pressure on wages.
- 3) *Related audit.* The Joint Legislative Audit Committee has previously investigated specified employment contracts at the UC. The audit, report number 2016-125.1, titled “The University of California Office of the President - It Has Not Adequately Ensured Compliance With Its Employee Displacement and Services Contract Policies,” was completed in August 2017, and found in its review of 31 service contracts at six university locations all of the following:
 - The university’s decentralized approach to contract management has resulted in its inability to report even the most basic contract information in the aggregate without a manual review of all of its contracts. Staff notes that the UC began implementation of its new software in July 2017.
 - The university has not fully followed its policy for justifying its decisions to displace university employees with service contract workers.
 - Two of the reviewed service contracts contained documentation that university employees were displaced.

- The two university locations administering these contracts did not fully adhere to the displacement guidelines in either contract.
- The Office of the President has not enforced compliance with the displacement guidelines and weaknesses in the guidelines may undermine their effectiveness.
- Low-wage service contract workers received hourly wages that were \$3.86 lower than comparable university employees received.
- The university generally adhered to the Office of the President's contract policy, but it could make improvements, such as ensuring the standard terms and conditions are included in services contracts.
- Some university locations avoided competitive bidding by repeatedly amending contracts and through sole-source exceptions.
- The Office of the President lacks a systemwide database that would allow it to track contracts at all university locations and report basic contract data.
- The Office of the President could not substantiate \$109 million in benefits it claimed as resulting from its systemwide procurement program.

The report recommends that the Legislature revise state law to specify the conditions under which the university may amend contracts without competition and more narrowly define the professional and personal services that the university may exempt from competitive bidding.

- 4) *UC's Fair Wage/Fair Work plan.* In July 2015, the UC adopted a Fair Wage/Fair Work Plan. Under the Plan, the UC has established a minimum level of pay for employees to ensure that all UC workers are provided a fair wage with a goal of reaching a minimum wage of \$15 per hour on October 1, 2017. In addition, the UC reports that it is implementing annual compensation audits and interim audits, paid for by the contractor, to monitor wage and working conditions as well as compliance with federal, state, and UC workplace laws and policies for contracted employees working pursuant to contracts entered into or renewed after October 2015. The UC has also established a phone hotline and central online system to report complaints directly to the Office of the President.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The UC estimates systemwide costs of \$172.6 million as a result of this measure. This estimate assumes that UC would have to increase the wage and benefit levels by 25 percent and 30 percent, respectively, to bring the work in-house or perform the functions going forward with UC employees.
- The UC also estimates that campuses and hospitals would incur additional costs, potentially in the range of several million each year, resulting from the need to hire additional supervisory staff, purchase specialized equipment and curtail clinical procedures due to lack of necessary staffing.
- This constitutional amendment would result in one-time General Fund costs to the Secretary of State in the range of \$400,000 to \$550,000 for printing and mailing costs to place the measure on the ballot in a statewide election. This estimate reflects the addition of 6-8 pages in the Voter Information Guide. However, actual costs may be higher or lower, depending on the length of required elements and the overall size of the ballot.

SUPPORT: (Verified 8/30/19)

AFSCME Local 3299 (source)

American Federation of State, County and Municipal Employees

California Federation of Teachers

California Labor Federation

Health Access California

University Council-American Federation of Teachers

OPPOSITION: (Verified 8/30/19)

California Association of Public Hospitals & Health Systems

California Chamber of Commerce

California Hospital Association

Carlsbad Chamber of Commerce

Chamber Newport Beach

City of Laguna Niguel

Fontana Chamber of Commerce

Greater Irvine Chamber of Commerce

Greater Riverside Chamber of Commerce

Oceanside Chamber of Commerce

Orange County Business Council

Oxnard Chamber of Commerce

Palm Desert Area Chamber of Commerce
Pleasanton Chamber of Commerce
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
San Diego Regional Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Simi Valley Chamber of Commerce
South Bay Association of Chambers of Commerce
Southwest California Legislative Council
University of California

ARGUMENTS IN SUPPORT: The AFSCME, Local 3299, sponsor of this constitutional amendment, states in support, “ACA 14 (Gonzalez) will protect support service workers from those in control of the University of California. These support service workers clean toilets, cut grass, pick up trash, cook food, and clean bedpans. While Article IX of the California Constitution prevents the Legislature and the Governor from correcting these realities at UC, Article II empowers the voters to do so.”

ARGUMENTS IN OPPOSITION: The UC states in opposition, “There are a variety of situations where it makes business sense for the University to utilize contract workers for short term assignments that are not needed throughout the year, a practice that would be prohibited under ACA 14. Examples include cleaning of dormitory rooms at the end of the school year, or additional security services needed occasionally for large events such as concerts or commencements.”

They continue, “Within the setting of the University’s hospitals, the needs for flexible staffing to respond to changes in patient census and condition severity are critically important – often times changing on a daily or even shift-by-shift basis. UC hospitals treat higher percentages of very sick patients –and have longer average lengths of stay compared to other California acute care hospitals. The restrictions established by ACA 14 would prevent UC hospitals from being able to obtain the staff they need on short notice and could force UC hospitals to divert ambulances away from University emergency rooms and trauma centers, cancel and reschedule important medical procedures and transfer patients to facilities outside of the community.”

ASSEMBLY FLOOR: 57-12, 6/24/19

AYES: Aguiar-Curry, Arambula, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooper, Daly, Eggman,

Frazier, Friedman, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager-Dove, Lackey, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Choi, Cooley, Cunningham, Fong, Kiley, Levine, Mathis, Melendez, Obernolte, Waldron

NO VOTE RECORDED: Bauer-Kahan, Chen, Diep, Flora, Gabriel, Gallagher, Irwin, Mayes, Patterson, Voepel

Prepared by: Ian Johnson / ED. /
9/18/19 15:37:46

****** END ******

THIRD READING

Bill No: ACR 115
Author: Kamlager (D), et al.
Amended: 3/9/20 in Senate
Vote: 21

SENATE BANKING & F.I. COMMITTEE: 4-1, 1/15/20
AYES: Bradford, Caballero, Durazo, Portantino
NOES: Chang
NO VOTE RECORDED: Dahle, Hueso

ASSEMBLY FLOOR: 50-18, 8/26/19 - See last page for vote

SUBJECT: Lending to gun-related businesses

SOURCE: Author

DIGEST: This resolution urges banks with which the State of California has a business relationship to evaluate their relationships with gun manufacturers and consider the repercussions of gun violence, and urges all banks to discuss their lending practices with their shareholders, adopt lending practices that mirror the people of California's values of protecting citizens before profit, and commit to strengthening their gun policies or exiting the gun sector.

Senate Floor Amendments of 3/9/20 urge banks to discuss their lending practices with their shareholders.

ANALYSIS:

This resolution:

- 1) Lists six banking subsidiaries with which the State of California has deposit accounts: Bank of America Corporation, Citigroup, JPMorgan Chase, Union Bank, U.S. Bancorp, and Wells Fargo.

- 2) Observes that four of the nation's largest gun manufacturers (Remington Outdoor Company; Smith & Wesson; Sturm, Ruger, & Co.; and Vista Outdoors) manufactured weapons used in mass shootings and are customers of banks with which the State of California has, or has had, a business relationship.
- 3) Cites activities in which two banks (Bank of America and Citibank) have engaged related to their business customers that manufacture firearms. Bank of America limited the number of its business customers that manufacture assault weapons for nonmilitary use; Citibank adopted a policy prohibiting the sale of firearms by its business customers to individuals who have not passed a background check or are younger than 21 years of age.
- 4) Observes that the California State Teachers' Retirement System (CalSTRS) divested from Remington Outdoor Company in 2015, and that the California Public Employees' Retirement System, CalSTRS, State Street Global Advisors, the San Francisco Employees' Retirement System, and nine other investors and financial managers with assets equal to \$4.8 trillion have come together to ask the civilian firearms industry to comply with five principles. These principles include safer and more traceable technology, adoption of responsible dealer practices, establishment of complete background checks, and education and training of employees at distributors.
- 5) Resolves that the Legislature urge each bank with which the State of California has a business relationship to evaluate its relationship with gun manufacturers and consider the repercussions of gun violence.
- 6) Resolves that the Legislature urge all banks to discuss their lending practices with their shareholders, adopt lending practices that mirror the people of California's values of protecting citizens before profit, and commit to strengthening gun policies or exiting the gun sector.

Comments

This resolution is sponsored by the author to encourage banks to reconsider their relationships with gun manufacturers who are their business customers.

In recent years, news reports of civilian mass shootings in the United States have become a common occurrence. Although California has passed numerous laws intended to outlaw assault-style weapons and high-capacity magazines and to require background checks before retailers may sell firearms and ammunition,

civilian mass shootings continue. The debate over how best to counter gun violence against innocent civilians remains unresolved.

This resolution adopts the viewpoint that the state should use its business relationships with banks to encourage those depositories to consider the repercussions of gun violence and evaluate their relationships with gun manufacturers. This resolution also urges the state to use its bully pulpit to encourage all banks to consider commit to strengthening their gun policies or exiting the gun sector. Senate Floor amendments encourage banks to discuss their lending practices with their shareholders to help ensure that shareholders are consulted about any changes in lending practices that banks adopt to help reduce gun violence.

Related/Prior Legislation

AJR 5 (Jones-Sawyer, Resolution Chapter 127, Statutes of 2019) urged the federal government to use California as an example for firearm safety and to pass legislation providing universal firearm safety regulation throughout the United States.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 3/9/20)

State Treasurer Fiona Ma
Bay Area Student Activists
Brady California United Against Gun Violence
Jewish Center for Justice
NeverAgainCA
San Diegans for Gun Violence Prevention
Youth ALIVE!

OPPOSITION: (Verified 3/9/20)

National Shooting Sports Foundation

ARGUMENTS IN SUPPORT: Several organizations that advocate against gun violence sent nearly identical letters of support, stating “A key player in the gun violence crisis taking place in the United States lies in the hands of gun manufacturers producing anything from a handgun to a military style assault weapon. These manufacturers play a major role in the supply of firearms available to Americans...California banks with the same financial institutions that lend to

gun manufacturers which play a critical role in the gun violence crisis and numerous mass shootings.”

ARGUMENTS IN OPPOSITION: The National Shooting Sports Foundation writes that ACR 115 appears to assume business relationships between banks and gun manufacturers result in negative repercussions for the people of California “and that businesses which realize a profit from commerce in their products are undesirable. While the firearms industry respects the right of financial institutions and other service providers to make business decisions based on objective criteria, it is unacceptable to discriminate against businesses simply because they are engaged in the lawful commerce of firearms, a heavily regulated activity protected by the Second Amendment.”

ASSEMBLY FLOOR: 50-18, 8/26/19

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Daly, Eggman, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Grayson, Holden, Jones-Sawyer, Kalra, Kamlager-Dove, Levine, Limón, Low, Maienschein, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Santiago, Mark Stone, Ting, Wicks, Wood, Rendon

NOES: Bigelow, Brough, Choi, Flora, Fong, Frazier, Gallagher, Gray, Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte, Patterson, Salas, Voepel, Waldron

NO VOTE RECORDED: Chen, Cooley, Cooper, Cunningham, Diep, Irwin, Petrie-Norris, Rodriguez, Blanca Rubio, Smith, Weber

Prepared by: Eileen Newhall / B. & F.I. /
3/11/20 11:48:57

**** END ****