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

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<b>Bill No:</b>	AB 1329	<b>Hearing Date:</b>	July 9, 2025
<b>Author:</b>	Ortega		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
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**SUBJECT:** Workers' Compensation: Subsequent injuries payments

**KEY ISSUE**

This bill, for purposes of claims for special additional compensation from the Subsequent Injuries Benefits Trust Fund (SIBTF), specifies the type of evidence necessary to demonstrate the existence of a prior permanent partial disability (PPD), requires that medical-legal evidence be collected only through existing qualified medical evaluation (QME) procedures, transfers responsibility for payment of SIBTF benefits from the State Compensation Insurance Fund (State Fund) to the Director of the Department of Industrial Relations (DIR), and clarifies existing law concerning the calculation of permanent disability rating.

**ANALYSIS**

**Existing law:**

- 1) Establishes a comprehensive system of workers' compensation that provides a range of benefits for an employee who suffers from an injury or illness that arises out of and in the course of employment, regardless of fault. This system requires all employers to insure payment of benefits by either securing the consent of the Department of Industrial Relations (DIR) to self-insure or by obtaining insurance from a company authorized by the state. (Labor Code §§3200-6002)
- 2) Establishes the Division of Workers' Compensation (DWC) and Workers' Compensation Appeal Board (WCAB) within DIR and charges them with monitoring the administration of workers' compensation claims and providing administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits. (Labor Code §3200 et seq.)
- 3) Establishes within the workers' compensation system temporary disability (TD) indemnity, permanent disability (PD) indemnity, and permanent partial disability (PPD) indemnity, which offer wage replacement of a specified injured employee's average weekly earnings while an employee is unable to work due to a workplace illness or injury. (Labor Code §§4650-4664)
- 4) Establishes the Subsequent Injuries Benefits Trust Fund (SIBTF), as a special trust fund in the State Treasury, of which the Director of DIR is a trustee.
  - a. Specifies that the fund is continuously appropriated for the non-administrative expenses of the workers' compensation program for workers who have suffered serious injury and who are suffering from previous and serious permanent disabilities or physical

impairments and prohibits the use of the funds for any other purpose (Labor Code §62.5(c)(1))

- 5) Provides that, if an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional PPD so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury (or “subsequent industrial injury” or “SII”) alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, the worker shall be paid in addition to the compensation due for the PPD caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article.
  - a. Specifies that the compensation be provided only if either:
    - i. The previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the SII affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or
    - ii. The permanent disability resulting from the SII, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (Labor Code §4751)
- 6) Provides that, for injuries occurring *before* January 1, 2013, in determining percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and their age at the time of the injury, *consideration being given to an employee’s diminished future earning capacity (DFEC)*.
  - a. For purposes of this section, the “nature of the physical injury or disfigurement” shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition).
  - b. For purposes of this section, an employee’s diminished future earning capacity shall be a numeric formula, as specified. (Labor Code §4660)
- 7) Provides that, for injuries occurring *on or after* January 1, 2013, in determining percentages of partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee’s age at the time of injury.
  - a. For purposes of this section, the “nature of the physical injury or disfigurement” shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee’s whole person impairment, as provided in the Guides, *multiplied by an adjustment factor of 1.4*. (Labor Code §4660.1)
- 8) Provides a system of administrative dispute resolution for cases where an injured worker and their employer do not agree over any issue associated with the delivery of traditional, non-SIBTF workers’ compensation benefits, including evaluation by a neutral qualified medical evaluator (QME), receipt of a medical-legal report prepared by the QME based on that

evaluation and any other medical records and information provided by the parties, the opportunity to meet before a workers' compensation administrative law judge for adjudication on the dispute based on the medical-legal report, and, if necessary, appeal the administrative law judge's decision to the WCAB for final judgement. (Labor Code §4060 et seq.)

- 9) Requires WCAB to fix and award the amount of special additional compensation paid and to direct the State Fund to pay additional compensation awarded; and allows the State Fund to draw from the State Treasury of the SIBTF as reimburse itself, as specified. (Labor Code §§4754 and 4755)
- 10) Levies separate surcharges upon all employers for purposes of deposit in the SIBTF, the Workers' Compensation Administration Revolving Fund (WCARF), the Uninsured Employers Benefits Trust Fund, and the Occupational Safety and Health Fund, and provides that the total amount of the surcharges be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year. (Labor Code §62.5(f)(1))

**This bill:**

- 1) Provides that, for compensable SII occurring on or after January 1, 2026, for purposes of determining eligibility for, and the amount of an award of, special additional compensation (i.e. SIBTF benefits), the existence of a prior PPD that existed at the time of the SII shall be determined by substantial evidence, based on medical records, testimony, or other evidence, that the prior PPD predated the SII and that the prior PPD resulted in loss of earnings, interfered with work activities of the employee, or otherwise impacted the ability of the employee to perform work activities or activities of daily living.
- 2) Specifies that medical-legal evidence in a proceeding filed for SIBTF benefits may only be obtained in accordance with existing procedures for QMEs applicable to traditional workers' compensation claims.
- 3) Requires the administrative director (AD) of the DWC to create and maintain database of QME physicians who have the necessary training and expertise to perform evaluations for SIBTF claims and specifies this database shall be used by the medical director of DWC to fulfill requests for a panel of QMEs in accordance with existing procedures.
- 4) Authorizes the Director of DIR to issue regulations as necessary for the implementation and orderly and effective administration of SIBTF medical evaluations.
- 5) Transfers responsibility for the payment of SIBTF benefits from the State Fund to the Director of DIR.
- 6) Clarifies, pursuant to existing law, that "permanent disability" in relation to SII occurring *on or after* January 1, 2005, and *prior to* January 1, 2013, is measured by the whole person impairment rating, based on the AMA Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), *after adjustment for diminished future earning capacity* and without regard to, or adjustment for, the occupation or age of the employee.

- 7) Clarifies, pursuant to existing law, that “permanent disability” in relation to SII occurring *on or after* January 1, 2013, is measured by the whole person impairment rating, also referred to as the impairment standard, based on AMA Guides, *after multiplication by the adjustment factor of 4.1*, pursuant to existing law, and without regard to, or adjustment for, the occupation or age of the employee.

## COMMENTS

### 1. Background:

#### Workers’ Compensation and the Subsequent Injuries Benefit Trust Fund

Under the California workers’ compensation system, if a worker is injured on a job, the employer must pay for the worker’s medical treatment, and provide monetary benefits if the injury is temporary or permanent. In most workers’ compensation cases, this compensation is provided in the form of temporary (TD) and/or permanent disability (PD) benefits, which are typically paid out over time based on a formula derived from ratings of the severity of the worker’s impairments. In return for receiving free medical treatment, the worker surrenders the right to sue the employer for monetary damages in civil court. This simple premise is sometimes referred to as the “grand bargain.”

Workers in California who are injured on the job and whose disability is exacerbated by a pre-existing condition can additionally seek benefits beyond what they would be awarded by the state’s workers’ compensation system for only the workplace injury. The benefits for the subsequent injury (or SII) are paid by the SIBTF.

The SIBTF was established by the Legislature in the wake of World War II, after veterans who returned home from the war suffered from high rates of pre-existing permanent disabilities. The SIBTF was created in order to address the dilemma of providing disability compensation without accounting for a pre-existing disability that may leave workers without protection and making the employer responsible for the pre-existing disability that may discourage them from hiring workers without visible disabilities.

The SIBTF provides additional compensation to injured workers with a pre-existing disability which, in combination with a work injury, would lead to a higher PD rating than what would be assigned on the basis of their workplace injury (referred to as the SII) alone. Under the SIBTF, injured workers meeting the criteria receive additional PD benefits paid by the SIBTF (rather than by their employer). The benefits under the SIBTF are financed by an assessment on workers’ compensation premiums (or on covered payroll for self-insured employers), so that the burden of the SIBTF payments are spread broadly across all employers covered by workers’ compensation.

Below are the eligibility requirements for an injured worker to receive SIBTF benefits, as set forth in Labor Code Section 4751:

1. The applicant suffered a SII (subsequent compensable work injury).

2. The applicant had one or more pre-existing PPDs that were actually labor disabling<sup>1</sup> at the time the applicant suffers a SII.
3. The PD resulting from the combination of the pre-existing PPDs and the SII is greater than the PD resulting from the SII alone.
4. The PD resulting from the combined effect of the SII and PPDs together is rated at least 70 percent or higher.
5. The PD resulting from the SII alone, without adjustment for age or occupation, was either: (1) at least 35 percent, or (2) was at least 5 percent and affected a hand, an arm, a foot, a leg, or an eye that is “opposite and corresponding” to a body part that had prior PPD.

Workers who meets the requirements for SIBTF and receive SIBTF benefits get the difference between the combined PD benefits that would be provided based on the SII and pre-existing disabilities and the amount owed to the worker for PD benefits on the SII alone.

Workers with combined disability ratings from 70 to 99 percent qualify for PPD benefits which end after a set number of weeks determined by the PD rating, and a life pension which begins after the PPD has been paid out and ends at death. If the combined rating equals 100 percent, the worker is entitled to lifetime permanent total disability (PTD) benefits, which are paid out at the TD rate. PTD benefits are more generous payments than other disability benefits because the amount paid per week can be much higher and because PTD benefits are paid until death. In a regular workers’ compensation case outside of the SIBTF program, lifelong disability benefit payments are infrequent because it is rare for cases to reach a PD rating of 70 percent or higher and PTD cases are even rarer. Additionally, other benefits paid in regular workers’ compensation cases, such as medical treatment, are not provided by the SIBTF.

#### *SIBTF Financial Instability and RAND Report Recommendations*

In 2023, after a rapid increase of the number of applications and the amount of benefits paid out by the SIBTF, DIR contracted with RAND to conduct a comprehensive study of SIBTF cases filed and resolved in recent years. Their goal was to document basic facts about the SIBTF program to provide a foundation of informed deliberation over policy options in response to the SIBTF’s recent growth.<sup>2</sup>

The RAND report found startling trends regarding the SIBTF and its financial instability. The report summarizes the following:

“A sharp increase in recent years in SIBTF claims and benefits and the potential for even greater liabilities poses a financial challenge for the SIBTF. Total annual payments from the SIBTF on the 12 years of cases considered in this report grew from \$13.6 million in 2010 to \$232 million in 2022. Looking to the future, this analysis estimates \$7.9 billion in

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<sup>1</sup> Case law has clarified that the pre-existing disability also needs to be “actually labor disabling.” In general, this principle means that the pre-existing disability must have been such that it could have been the basis for workers’ compensation permanent partial disability benefits if it had resulted from employment.

No other restrictions on the cause or nature of the pre-existing disability are imposed, however: health conditions that are asymptomatic, previously undiagnosed, developmental, congenital, or associated with aging can all be considered pre-existing disabilities that qualify the worker for SIBTF benefit.

<sup>2</sup> California’s Subsequent Injuries Benefits Trust Fund, Recent Trends and Policy Considerations. RAND. June 2024, <https://www.dir.ca.gov/dwc/SIBTF-Report.pdf>

SIBTF liabilities for cases filed or pending between 2010 and 2022, the midpoint of an estimated range of \$6.4–10.5 billion.

The recent surge in current and future liabilities can in part be attributed to interpretations of SIBTF’s governing statutes, which are vague on key issues concerning eligibility and compensation, and which are decades old. More recently, the wide parameters of the governing statutes and SIBTF rules have motivated claimants, their representatives, and vendors to make more frequent claims for injuries which in past decades might have yielded smaller benefits or might not have led to any benefits at all. In the absence of policy changes to ensure the SIBTF is implemented in a sustainable and fair way, decision makers can reasonably expect that funding demands will exceed the currently available resources and assessments on workers’ compensation premiums (or on covered payroll for self-insured employers) will have to continue to rise to cover the Fund’s growing liabilities.”

The RAND report identified several reasons for increasing liabilities to the SIBTF, many that result from a 2020 WCAB decision in *Todd v. SIBTF* [85 Cal. Comp. Cases 576 (App. Bd. En banc)]. According to the report:

“Prior to the [*Todd*] decision, ratings from impairments to multiple body parts, and the [PD] ratings from the SII and SIBTF cases, were typically combined using a formula referred to as the Combined Values Chart (CVC). The CVC takes into account the theoretical overlapping nature of impairments and disability and produces a combined PD rating that is lower than what would be derived from simply adding together two or more values. For example, two impairments each rated at 50 percent would yield a rating of 75 percent under the CVC. [...]

Instead, the *Todd* decision held that simple addition was the correct method to use for combining SII and PPD disability ratings in determining SIBTF eligibility and benefits. [...] This decision made it far more likely that an SIBTF case would reach a combined rating of 100 percent. In the examples above, the combined rating would increase from 75 percent pre-*Todd* to 100 percent post-*Todd*.”

The *Todd* decision increased both the number of applicants whose combined PD rating qualified them for SIBTF benefits, as well as the number of applicants whose combined PD rating now reached 100 percent. Because the likelihood of qualifying for generous lifetime benefits increased, the number of SIBTF cases that were resolved through “compromise and release” settlements for a lump sum dramatically decreased, as litigating the case to a final judgement more often resulted in a larger award. This was reflected in a significant increase in non-benefit costs to the SIBTF due to skyrocketing attorney fees, which grew from \$770,000 in 2010 to \$27 million in 2022.

The author seeks to implement, at least in part, some of the RAND report recommendations with this bill, as is discussed in more detail below. These include 1) incorporating SIBTF medical evaluations into the existing QME process, 2) amending the SIBTF statute to provide a more specific definition of what constitutes a PPD for purposes of SIBTF eligibility, and 3) updating the SIBTF criteria to address the diminished future earnings

capacity. The report also includes several additional recommendations that this bill does not address.<sup>3</sup>

#### SIBTF and the QME Process

In a traditional workers' compensation claim, if a dispute arises between the injured worker and the employer over whether an injury is work-related, a worker's capacity to return to work, the existence or extent of a permanent disability, or the need for specific or future medical treatment, the injured worker may request a QME – qualified medical evaluators. Under existing law, injured workers filing SIBTF claims are *not* subject to the QME process for the collection of medical-legal evidence. Instead, workers filing SIBTF claims may select their own medical evaluators.

The RAND Report recommends that the Labor Code could be modified to include SIBTF in the QME reforms. The report identifies fraud and abuse resulting from “doctor shopping” as a possible contributor to the financial instability of the SIBTF. The report further explains, “[n]arrowing the choice of medical experts and creating mandatory processes around medical evaluations for SIBTF cases, including potentially requiring that the same medical reports used for the SII be used for purposes of the SIBTF case, could reduce the potential for ‘doctor shopping’ for evaluators who deliver higher ratings specifically targeted at SIBTF eligibility.”

This bill, AB 1329, specifies that medical-legal evidence in a SIBTF claim may only be obtained through the QME process and requires the administrative director of the DWC to create and maintain a database of QME physicians with the necessary training and expertise to evaluate SIBTF claims.

#### SIBTF Benefits Calculation and Diminished Future Earnings Capacity

In order to qualify for SIBTF benefits, a worker's PD resulting from the SII suffered must equal to 35 percent or more of TD, or 5 percent or more in specified circumstances “when considered alone and without regard to or adjustment for the occupation or the age of the employee.” However, the Labor Code does not specify whether the calculation should include adjustments for diminished future earnings capacity (DFEC), or whether DFEC should only be taken into consideration for the combined PD.

The RAND report recommends the Legislature update the SIBTF threshold eligibility criteria to address the future earnings capacity under Labor Code Section 4751, which has not been changed since 1959.

As the Assembly Committee on Insurance points out, “In 2016, the WCAB held in *Geletko v. Cal. Highway Patrol* [81 Cal. Comp. Cases 661] that the omission of reference to this diminished competitive capacity, which roughly corresponds to DFEC, in the ‘when considered alone’ provision implied that DFEC adjustments should not be excluded in SIBTF threshold calculations. This meant that, for injuries occurring after the incorporation of the DFEC modifier but before the passage of SB 863 (i.e. between January 1, 2005 and January

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<sup>3</sup> Other recommendations from the RAND report include specifying that use of the CVC is necessary in SIBTF cases, adopting statute of limitations for SIBTF case filings, increasing investments in SIBTF administration, limiting or capping SIBTF benefits, and considering whether the SIBTF remains necessary in light of modern policy and anti-disability discrimination statutes and protections.

1, 2013), the DFEC modifier should be included when calculating the permanent disability rating for purposes of meeting the threshold to qualify for SIBTF benefits.

Because SB 863 replaced the DFEC modifier with the 1.4 adjustment factor, this also meant that for injuries occurring on or after January 1, 2013, the 1.4 adjustment factor should be included when calculating the permanent disability rating for SIBTF threshold purposes.

To avoid further confusion and unnecessary litigation, this bill would codify the substantive impacts of the *Geletko* decision. Specifically, the bill would clarify that, for SIIs occurring between January 1, 2005 and January 1, 2013, ‘PD’ should be measured based on the whole person impairment rating calculated based on the AMA Guides after adjustment for DFEC, and that, for SIIs occurring on or after January 1, 2013, ‘PD’ should be measured based on the whole person impairment rating calculated based on the AMA Guides after multiplication by the 1.4 adjustment factor. The bill also specifies that these provisions are declarative of existing law.”

#### PPD Criteria for SIBTF Eligibility

When the SIBTF was initially established, one of the purposes was to mitigate any potential discrimination from employers for hiring employees with pre-existing disabilities. Around the same time, in an appeal arising from a SII fund case, the California Supreme Court clarified that an applicant’s alleged pre-existing disability must have been “actually labor disabling” in order to establish eligibility for SIBTF benefits. This was interpreted to mean that the pre-existing disability could have been the basis for workers’ compensation PPD benefits if it had resulted from employment.

However, the RAND report found that a “growing number of SIBTF cases allege PPDs that are common health conditions and/or chronic diseases frequently found in an aging population” and case law offers little guidance on how to apply the “actually labor disabling” principle.

This bill provides a more specific definition of what constitutes a PPD for SIBTF eligibility, based on substantial evidence that the PPD predated the SII and resulted in a loss of earnings, interfered with work activities of the employee, or otherwise impacted the ability of the employee to perform work or daily living activities.

#### SIBTF Benefits Payment and the State Fund

Existing law requires SIBTF benefits be paid to injured workers by the State Fund, at the direction of the WCAB. The State Fund may draw funds directly from SIBTF to make award payments up to \$50,000, and is authorized to reimburse itself from the Workers’ Compensation Administration Revolving Fund for the cost of providing this service. The State Fund was established in 1913 by the Legislature to provide a stable option for workers’ compensation insurance to employers in California, including for state agencies. State Fund is a quasi-public entity that competes with other workers’ compensation insurance providers on the open market.

This bill shifts the responsibility of administering SIBTF benefits from this complicated State Fund reimbursement scheme to direct payments made by DIR. DIR oversees the SIBTF as its trustee, so formally shifting the responsibility for administering payments SIBTF to DIR simplifies the payment process.



**2. Need for this bill?**

According to the author:

“Subsequent injuries are handled differently from other Workers Compensation injuries. Several of those differences have resulted in outcomes that are unnecessarily more financially burdensome 1) The use of Qualified Medical Examiners has no limit; 2) There are lesser standards of evidence; 3) Permanent Disability is not defined consistent with the 2004 and 2012 Workers’ Comp reforms

Statistically any worker suffering an injury that results in a permanent disability is at a higher risk for a subsequent injury. An employer assumes all of that risk if they give a previously disabled worker a ‘second-chance’ at supporting themselves. The SIBTF was created so that these second-chance employers are not penalized for hiring a higher risk employee.”

**3. Proponent Arguments:**

According to supporters of the bill, the California Applicant’s Attorneys:

“The SIBTF was created after World War II to encourage employers to take the risks associated with hiring a previously disabled vet. Today’s growing recognition that PTSD and other mental health issues can in fact be work related injuries has increased the relevancy of the SIBTF.

Injured workers are eligible for workers’ compensation benefits regardless of immigration status, including the SIBTF. Undocumented workers do the most dangerous and injury-inducing jobs in society.

AB 1329 aligns the SIBTF QME process, standard for evidence, and definition of permanent disability with the 2004/2012 reforms. Combined, these thoughtful changes will reduce litigation costs, reduce Med-Legal costs, and reduce the number of 100% disability cases. The cumulative impact of these changes will reduce public and private employer assessments by 20-25%.”

**4. Opponent Arguments:**

According to the American Property Casualty Insurance Association, California Chamber of Commerce, California Coalition of Workers’ Compensation, Public Risk, Innovation, Solution, and Management (PRISM), all of who are opposed unless amended:

“While both state and federal law have evolved to protect workers from discrimination, SIBTF still serves an important function for injured workers who face the unfortunate results of combined industrial and non-industrial disabilities or impairments. The volume of applicants to SIBTF has nearly tripled over the past decade, causing assessments on employers to rise 800% between 2011 and 2024. Total annual payments from SIBTF have grown from \$13.6 million in 2010 to \$232 million in 2022. Total fund liabilities for resolved and pending cases between 2010 and 2022 are estimated at \$7.9 billion, which is paid by direct assessments on employers.

The precipitous increase in the number of applications and payouts from the fund are the result of several factors, few of which are addressed by the current contents of AB 1329. Our organizations believe that the legislature should address the easily identifiable problems with SIBTF in a comprehensive manner. The Department of Industrial Relations commissioned a study of the fund and its recent explosion in applicants and payments, and made several findings that could help the legislature identify reasonable and balanced policy solutions. Additionally, Governor Newsom's May Revision identified the SIBTF as an important budget-related policy issue that needed to be addressed.

For these reasons, our organizations respectfully oppose your AB 1329 because the bill in print does not adequately address the problems with the SIBTF. We would like to work with your office and the Newsom Administration on amendments that would comprehensively address the significant problems that are destabilizing the fund."

**5. Prior Legislation:**

SB 863 (De Leon, Chapter 363, Statutes of 2012) enacted major reforms to the workers' compensation system, including establishing the independent medical review and IBR processes for resolving disputes.

SB 899 (Poochigian, Chapter 34, Statutes of 2004) enacted major reforms to the workers' compensation system, including authorizing medical provider networks, revising the QME process, and adopting a modified Permanent Disability Rating Schedule that incorporated a DFEC modifier.

**SUPPORT**

California Applicants' Attorneys Association

**OPPOSITION**

American Property Casualty Insurance Association  
California Chamber of Commerce  
California Coalition on Workers Compensation  
Public Risk Innovation, Solutions, and Management (PRISM)

**-- END --**