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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair  
2025 - 2026 Regular Session

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### AB 1329 (Ortega) - Workers' Compensation: Subsequent injuries payments

**Version:** April 21, 2025

**Urgency:** No

**Hearing Date:** August 18, 2025

**Policy Vote:** L., P.E. & R. 4 - 1

**Mandate:** No

**Consultant:** Robert Ingenito

**Bill Summary:** AB 1329 would make specified changes to the administration of workers' compensation claims from the Subsequent Injuries Benefits Trust Fund (SIBTF).

#### Fiscal Impact:

- The Department of Industrial Relations (DIR) indicates that it would incur annual costs of \$1.6 million to implement the provisions of the bill. (Workers' Compensation Administration Revolving Fund). Workload drivers would include creating and maintaining a qualified medical evaluation (QME) database for subsequent industrial injury (SII) claims, and revising the criteria and procedures for administering a SIBTF claim and benefit payment.
- To the extent that this bill results in lower workers' compensation for employers, the bill would result in savings to the State as a direct employer (General Fund or special fund). The magnitude is unknown.

**Background:** Under the California workers' compensation system, if a worker is injured on a job, the employer must pay for 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.

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 SII are paid by the SIBTF, which was established in 1945, 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 (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.

Workers who meet eligibility 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.

Resulting from the rapid increases in the volume of applications and payments for SIBTF benefits, DIR contracted with the RAND Corporation in 2023 to conduct a comprehensive SIBTF study. The ensuing June 2024 report concluded the following concerning SIBTF's long-term liabilities and financial instability: "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, decisionmakers can reasonably expect that funding demands will exceed the currently available resources and assessments on workers' compensation premiums...will have to continue to rise to cover the Fund's growing liabilities."

Current law requires SIBTF benefits be paid to injured workers by State Compensation Insurance Fund, at the direction of the Workers Compensation Appeals Board (WCAB). 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.

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.

**Proposed Law:** This bill would, among other things, do the following:

- Provide 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.

- Specify 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.
- Require the administrative director (AD) of the DIR's Division of Workers' Compensation (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.
- Authorize DIR to issue regulations as necessary for the implementation and orderly and effective administration of SIBTF medical evaluations.
- Transfer responsibility for the payment of SIBTF benefits from the State Fund to the Director of DIR.
- Clarify, 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.
- Clarify, 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.

**Related 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.

**Staff Comments:** This bill would shift the responsibility of administering SIBTF benefits from State Fund to direct payments made by DIR. DIR oversees the SIBTF as its trustee; thus, formally shifting the responsibility for administering payments SIBTF to DIR would simplify the payment process.

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