

## CONCURRENCE IN SENATE AMENDMENTS

AB 1329 (Ortega)

As Amended August 29, 2025

Majority vote

**SUMMARY**

Makes various changes to the process of filing, evaluating, and paying claims for special additional compensation from the Subsequent Injuries Benefits Trust Fund (SIBTF).

**Senate Amendments**

- 1) Specify that, for purposes of determining the existence of a prior permanent partial disability (PPD), acid reflux (including gastroesophageal reflux disease), diabetes, sleep apnea, and sexual dysfunction shall not be considered as preexisting labor disabling disabilities for determining eligibility for SIBTF benefits.
- 2) For subsequent compensable injuries occurring on or after January 1, 2026, establish a statute of limitations for an employee to file an application for SIBTF benefits of five years from the date of the subsequent compensable injury, or one year from the date that the level of permanent disability arising from the subsequent compensable injury is determined by the Workers' Compensation Appeals Board (WCAB), whichever is later.

**COMMENTS**

- 1) *The SIBTF*: The SIBTF is funded through a payroll surcharge levied on all employers, based on a percentage of the premium paid by insured employers, and based on a percentage of indemnity paid during the most recent year for self-insured employers. In the event a worker with a prior permanent partial disability (PPD) suffers a subsequent industrial injury (SII), compensation for the disability attributable to the SII is provided by the employer, while compensation for additional disability resulting from the combination of the SII and the PPD is provided by the SIBTF.

To be eligible for SIBTF benefits, a worker must meet specific requirements pertaining to the pre-existing disability (i.e. PPD), the nature and severity of the SII, and the severity of the combined permanent disability rating. A worker with a combined disability rating from 70-99% may qualify for permanent partial disability benefits, which end after a number of weeks determined by the permanent disability rating, and a smaller life pension, which begins following the completion of permanent partial disability benefits and ends at death. For workers determined to have a combined rating of 100%, the worker is entitled to lifetime permanent total disability benefits. These permanent total disability benefits are significantly more generous than typical workers' compensation benefits, both because they are paid at the higher temporary disability rate, and because they continue until death.

- 2) *Financial solvency of the SIBTF*: In 2023, noting rapid increases in the volume of applications and payments for SIBTF benefits, DIR contracted with RAND to "conduct a comprehensive study of the SIBTF." This report, published in June 2024, identified startling trends concerning the long-term liabilities of the SIBTF and its resulting financial instability. As the RAND report describes:

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 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, decisionmakers 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.

- 3) *Incorporating SIBTF claims into the existing QME process:* In a traditional workers' compensation claim (i.e., not for SIBTF special compensation), if a dispute arises between the injured worker and the employer over certain questions pertaining to the nature and extent of appropriate workers' compensation benefits, the injured worker may request review by a qualified medical evaluator (QME), subject to strict timelines for medical-legal review, and selected based on a process to ensure impartiality.

SIBTF claims are not subject to the QME process for collection of medical-legal evidence, and instead, injured workers filing SIBTF claims select their own medical evaluators. The aforementioned RAND report notes that the non-benefit costs to the SIBTF resulting from medical-legal reports was a substantial driver of its increasing liabilities. The RAND report also identifies consequent fraud and abuse resulting from "doctor shopping" as a possible contributor to SIBTF insolvency that could be readily addressed.

The report recommends that the Labor Code be amended to "include SIBTF in the medical examiner reforms that were implemented in 2005 for other cases in the system. Narrowing 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 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."

Based on this recommendation, this bill would specify that medical-legal evidence in an SIBTF claim proceeding can only be obtained through the QME process, and would require the AD to create and maintain a database of QME physicians with the necessary training and expertise to evaluate SIBTF claims from which to empanel QMEs for these purposes.

- 4) *Diminished future earnings capacity (DFEC) in SIBTF benefit qualification:* In order to qualify for SIBTF benefits, the permanent disability resulting from the SII suffered by the worker must, "when considered alone and without regard to or adjustment for the occupation or the age of the employee," equal 35% or more of total disability, or 5% or more in specified circumstances. While Section 4751 of the Labor Code, which describes these criteria,

excludes consideration of occupation or age in these calculations, the section is silent on whether the calculation should include adjustments for DFEC, or whether DFEC should only be taken into account when considering the combined permanent disability. This omission, and a convoluted legislative history, has resulted in significant confusion and litigation.

To avoid further confusion and unnecessary litigation, this bill would codify the substantive impacts of existing case law. Specifically, the bill would clarify that, for SIIs occurring between January 1, 2005 and January 1, 2013, "permanent disability" 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, "permanent disability" 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.

- 5) *"Actually labor disabling"*: Among the recommendations in the RAND report for maintaining the solvency of the SIBTF was a recommendation that the Legislature "amend the SIBTF statutes to provide a more specific definition of what constitutes a PPD for purposes of SIBTF eligibility." The report notes:

[A] growing number of SIBTF cases allege PPDs that are common health conditions and/or chronic diseases frequently found in an aging population. In many cases, the extent to which these conditions are "actually labor disabling" is unclear, and case law offers little guidance on how to apply this principle. The program would benefit from more specific eligibility requirements and a clear specification of the evidence required to establish that a PPD was labor disabling at the time of the SII.

This bill seeks to provide this clarity by specifying that "the existence of a prior permanent partial disability that existed at the time of the subsequent compensable injury shall be determined by substantial evidence, based on medical records, testimony, or other evidence, that the prior permanent partial disability predated the subsequent compensable injury and that *the prior permanent partial disability 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.*" [Emphasis added] While the specific phrase "actually labor disabling" is not used in the bill, this language appears to summarize and concretize what are otherwise vague criteria from assorted case law that describe specific features of a PPD eligible for SIBTF special compensation.

By concisely clarifying the types of evidence necessary to support the existence of a PPD that existed at the time of the SII in accordance with existing case law, AB 1329 may reduce the frequency and duration of litigation concerning whether an injured worker qualifies for SIBTF special compensation.

- 6) *Senate amendments: In an attempt to curb documented abuses of the SIBTF, Senate amendments would prohibit consideration of acid reflux (including gastroesophageal reflux disease), diabetes, sleep apnea, and sexual dysfunction as preexisting labor disabling disabilities when determining eligibility for SIBTF special compensation. The amendments would also establish a statute of limitations on the filing of claims for SIBTF special compensation of five years from the date of the SII, or one year from the date that the level of permanent disability arising from the SII is determined by the WCAB, whichever occurs later.*

*The RAND report found that nearly 70% of SIBTF claims allege at least one condition that the Department of Industrial Relations considers a "common, chronic health condition." A significant portion of those claims cite the specific conditions identified in the amendments, yet it is difficult to envision how prior sexual dysfunction, for example, could reduce a claimant's capacity to work beyond the disability resulting from the SII. Accordingly, the amendments prohibit SIBTF claimants from establishing PPD with common, chronic conditions that generally have minimal impact on the ability to work. This could reduce the number of spurious and fraudulent claims that increasingly strain the SIBTF, without substantially impeding legitimate claims.*

**According to the Author**

"In the last 10 years, the average business in California has seen a \$13,356 reduction in their annual Workers' Compensation cost. During the same 10 years, the Secondary Injury Fund's average assessment has increased by \$176 and an estimated 95,000 California Gulf War veterans have been diagnosed with PTSD. In 2019, the Legislature adjusted Workers' Compensation for first responders with PTSD, but kept the Secondary Injury Fund for Gulf War veterans and others with disabling injuries.

The fund was first created because a soldier who had a disabling injury is more prone to a subsequent injury. The fund spreads the risk so patriotic employers don't carry the burden. AB 1329 will lower assessments paid by all employers into the Subsequent Injury Benefit Trust Fund (SIBTF) by 20-25% while continuing to reduce the financial risk to employers who hire a previously disabled worker."

**Arguments in Support**

The California Applicant Attorneys' Association (CAAA) argues:

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%.

**Arguments in Opposition**

A coalition of organizations in opposition to the bill unless amended, comprised of the California Coalition on Workers' Compensation (CCWC), the California Chamber of Commerce (CalChamber), and the American Property Casualty Insurance Association (APCIA), argues:

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.

**FISCAL COMMENTS**

According to the Senate Appropriations Committee, "The Department of Industrial Relations (DIR) would likely incur costs in the hundreds of thousands of dollars annually [...]. 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. [...] The magnitude is unknown."

## VOTES:

### ASM INSURANCE: 14-0-3

**YES:** Calderon, Wallis, Addis, Alvarez, Ávila Farías, Berman, Gipson, Harabedian, Krell, Nguyen, Ortega, Petrie-Norris, Michelle Rodriguez, Valencia

**ABS, ABST OR NV:** Chen, Ellis, Hadwick

### ASM APPROPRIATIONS: 11-0-4

**YES:** Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache

**ABS, ABST OR NV:** Sanchez, Dixon, Ta, Tangipa

### ASSEMBLY FLOOR: 63-1-15

**YES:** Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Connolly, Elhawary, Fong, Gabriel, Garcia, Gipson, Jeff Gonzalez, Mark González, Haney, Harabedian, Hart, Irwin, Jackson, Kalra, Krell, Lee, Lowenthal, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

**NO:** DeMaio

**ABS, ABST OR NV:** Castillo, Chen, Davies, Dixon, Ellis, Flora, Gallagher, Hadwick, Hoover, Lackey, Macedo, Patterson, Sanchez, Ta, Tangipa

### SENATE FLOOR: 29-10-1

**YES:** Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Cortese, Durazo, Gonzalez, Grayson, Hurtado, Laird, Limón, McGuire, McNerney, Menjivar, Padilla, Pérez, Reyes, Richardson, Rubio, Smallwood-Cuevas, Umberg, Wahab, Weber Pierson, Wiener

**NO:** Alvarado-Gil, Choi, Dahle, Grove, Jones, Niello, Ochoa Bogh, Seyarto, Strickland, Valladares

**ABS, ABST OR NV:** Stern

## UPDATED

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