

- 2) Potential costs of an unknown amount to the Department of Justice (DOJ) to investigate transferred cases (OSHF, LWDF, or GF). The magnitude of costs depends on how frequently the Attorney General is determined to be the appropriate prosecuting authority for BOI case referral and the level of additional staffing DOJ needs to handle the related workload.

Similarly, by requiring local prosecuting authorities (district attorneys and city attorneys) to investigate transferred cases, this bill may create a state-mandated local program. If the Commission on State Mandates determines the provisions of this bill create a new program or impose a higher level of service for which the state must reimburse local costs, the appropriate local agency could seek reimbursement from the state (OSHF, LWDF, or GF). The magnitude of costs is unknown and depends on the volume of cases transferred for investigation and the complexity of each case.

Although this bill specifies that the transfer of investigative responsibility from the BOI to the appropriate prosecuting authority is contingent on the appropriation of sufficient funding, actual costs incurred by the prosecuting authority may exceed the appropriated amount.

- 3) Ongoing cost pressures of an unknown amount to the courts in additional workload if this bill makes it more likely a case will be prosecuted (GF or Trial Court Trust Fund (TCTF)). It is unclear how many additional criminal prosecutions may occur statewide and how much court time may be needed to resolve each case, but it generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on staff and the TCTF may create a demand for increased court funding from the GF. The state budget provides annual GF backfills to the TCTF to offset revenue reductions, totaling approximately \$117.3 million in fiscal year 2025-26.

Additionally, potential incarceration costs of an unknown amount to the counties and California Department of Corrections and Rehabilitation to the extent increased criminal prosecutions result in convictions (local funds, GF). Actual incarceration costs will depend on the number of convictions, the length of each sentence, and whether each sentence is served in county jail or state prison.

- 4) One-time costs of an unknown amount to the BOI to establish written case review procedures and to Cal/OSHA to establish processes to transmit case information, as well as likely minor costs to the BOI to report additional vacancy information (OSHF).

The Legislative Analyst's Office recently warned of GF structural deficits of around \$35 billion per year in the 2027-28 fiscal year and ongoing.

COMMENTS:

- 1) **Purpose.** According to the author:

California continues to have a higher-than-average rate of workplace injuries and Cal/OSHA is ill-equipped to keep up the pace. AB 2321 will make important reforms to the BOI's processes, as well as deputize public prosecutors to alleviate some of the BOI's workload to ensure criminally-liable employers are held accountable and future criminal conduct is deterred.

- 2) **Background. BOI.** Within Cal/OSHA, the BOI is responsible for investigating an accident concerning a violation that involves a serious injury to five or more employees, death, or request for prosecution by a Cal/OSHA representative. The BOI also reviews inspection reports concerning a serious violation that involves serious injuries to four or less employees or a serious exposure. Upon that review, the BOI may further investigate a case if the BOI believes a criminal violation may have occurred and is responsible for preparing such a case for criminal prosecution, including gathering evidence and findings. For a case that involves a serious injury or death, the BOI must refer the results of the investigation to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the BOI determines there is insufficient evidence of a violation of law.

Cal/OSHA Audit. Cal/OSHA continues to suffer from significant understaffing and high turnover, particularly in Cal/OSHA's enforcement division. The author of this bill requested an audit of Cal/OSHA in 2024, which was released in July 2025. The audit found numerous operational issues at Cal/OSHA, including at the BOI. According to the audit, between 2019 and 2022, the BOI referred 1.7% of cases for criminal prosecution. As a result of understaffing, the BOI is generally only investigating fatalities, leaving other cases involving serious workplace injuries unaddressed. The audit also found that the BOI lacks written policies and procedures for reviewing cases and often does not receive necessary information from Cal/OSHA inspectors.

This bill addresses audit findings by requiring the BOI to establish certain case review procedures and requiring Cal/OSHA to establish case transmittal procedures. In light of the identified staffing deficiencies at the BOI and Cal/OSHA, this bill transfers, upon appropriation of sufficient funding, the BOI's existing responsibility to investigate and prepare for criminal prosecution cases involving a death or permanent total disability to the appropriate prosecuting authority. Separately, this bill also allows the appropriation of OSHF and LWDF monies to prosecuting authorities to support their existing responsibility to prosecute cases referred by the BOI.

- 3) **Support and Opposition.** This bill is supported by the California Federation of Labor Unions, which argues this bill "will make important improvements to the investigative and prosecutorial processes for workplace fatalities and other serious injuries and exposures."

This bill is opposed by the California Chamber of Commerce, which argues this bill "will waste state resources by compelling prosecutors (who are not workplace safety experts) to handle workplace safety cases where no crime has been committed."

- 4) **Related Legislation.** AB 2488 (Schiavo) requires the Department of Industrial Relations to contract with programs at the University of California to conduct a study to evaluate the understaffing and vacancies within Cal/OSHA. AB 2488 is pending on this committee's suspense file.

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