

ASSEMBLY THIRD READING

AB 2321 (Ortega)

As Amended May 18, 2026

Majority vote

SUMMARY

Establishes certain case review procedures for the Division of Occupational Safety and Health (Cal/OSHA) and its Bureau of Investigations (BOI) and creates, upon appropriation of sufficient funding, a five-year pilot program transferring certain responsibilities from the BOI to the district attorneys in Alameda and Santa Clara counties related to workplace health and safety violations in those counties.

Major Provisions

Pilot Program in Alameda and Santa Clara counties:

- 1) Removes, upon appropriation of sufficient funding, the BOI's investigation responsibility for workplace health and safety violations in the counties of Alameda and Santa Clara that result in a death or permanent total disability, as defined, and instead requires the Alameda County District Attorney or the Santa Clara County District Attorney, based on the county in which the accident occurred, to be responsible for directing those investigations and preparing cases for the purpose of prosecution.
 - a) Requires Cal/OSHA to immediately notify the Alameda County District Attorney or the Santa Clara County District Attorney of an accident in which there is a death or permanent total disability, and immediately provide the Alameda County District Attorney or the Santa Clara County District Attorney with all of the following:
 - i) All initial accident reports.
 - ii) Any inspection report for an inspection involving a serious violation where there is a fatality or that results in a permanent total disability to one or more employees.
 - iii) Any other Cal/OSHA report necessary for the Alameda County District Attorney's or the Santa Clara County District Attorney's investigation.
 - iv) Any other document in the possession of the Cal/OSHA that is requested by the Alameda County District Attorney or the Santa Clara County District Attorney for its review or investigation or that the Cal/OSHA determines will be helpful to the Alameda County District Attorney or the Santa Clara County District Attorney in its investigation of the case.
 - b) Defines "permanent total disability" to have the same meaning as in Labor Code Section 4662.
 - c) Provides that this provision shall remain in effect only until January 1, 2032, and, as of that date, is inoperative.
- 2) Authorizes monies in the Occupational Safety and Health Fund or the Labor and Workforce Development Fund to be expended by the Alameda County District Attorney and the Santa

Clara County District Attorney, upon appropriation, for the support of the activities these entities perform related to investigating and prosecuting such violations.

- 3) Provides that a special statute is necessary because of the unique circumstances facing the counties of Alameda and Santa Clara.

General/statewide BOI provisions:

- 4) Requires the BOI to immediately, rather than in a timely manner, refer the results of an investigation to the appropriate prosecuting authority having jurisdiction for appropriate action, unless the BOI determines that there is legally insufficient evidence of a violation of the law.
 - a) Requires the BOI, if it determines there is legally insufficient evidence of a violation of the law, to immediately notify the appropriate prosecuting authority without first being requested to do so by the prosecuting authority.
- 5) Requires the BOI to establish written policies and procedures for the process of reviewing cases and deciding whether to investigate or refer them for prosecution, including, but not limited to, a requirement that the BOI document a rationale for why it has decided not to investigate or not to refer each case within its jurisdiction.
- 6) Requires Cal/OSHA to establish a routine or automated process for transmitting information to the BOI about accident cases with nonfatal injuries that the BOI is required to review.
- 7) Requires the BOI's annual report to additionally be submitted to the Legislature and to include information relating to job classifications and vacancies within the BOI.

COMMENTS

In 2024, Assemblymember Ortega requested an audit of Cal/OSHA, which was completed in July 2025.¹ The audit found numerous operational issues at the division, stemming largely from understaffing and antiquated processes. Among the audit's findings were:

- 1) 82% of complaints were inspected via letter, without real consequences for noncompliant employers.
- 2) When Cal/OSHA did conduct on-site inspections, its inspectors did not consistently document effective reviews of employers' injury and illness prevention programs.
- 3) When Cal/OSHA identified hazards and cited employers, it did not always document whether those employers had abated the hazards.

¹ The Division of Occupational Safety and Health: Process Deficiencies and Staffing Shortages Limit Its Ability to Protect Workers. California State Auditor. <https://www.auditor.ca.gov/wp-content/uploads/2025/07/2024-115-Report.pdf>

- 4) Cal/OSHA often assessed employers less than the violations warranted, and often did not document a clear rationale for further reducing fines in post-citation negotiations with employers.
- 5) Key Cal/OSHA policy documents have not been revised in years, and the division relies on paper-based case files.

With regards to the BOI, the auditor found that understaffing and process deficiencies are hindering the bureau's ability to review and investigate cases that may involve criminal conduct and prepare them for prosecution.

The BOI is responsible for directing investigations for every case in which there is a fatality or a serious injury to five or more employees, or a request for prosecution from a Cal/OSHA representative. The BOI is required, in investigating these cases, to look for criminal conduct and refer to public prosecutors any cases where such conduct is found. Public prosecutors ultimately decide whether to take cases to court and handle the prosecution. The BOI must also review Cal/OSHA inspection reports for cases in which there is a serious injury to one to four employees or a serious exposure and is authorized to investigate and refer such cases in which it finds there may have been criminal conduct.

However, between 2019 and 2022, the BOI referred just 1.7% of cases in its jurisdiction for criminal prosecution. The auditor further reported that, due to understaffing, the BOI is essentially only investigating fatalities, leaving other cases of serious workplace injuries and safety issues unaddressed.

The audit further found that the BOI lacks written policies and procedures for reviewing cases and deciding whether to investigate or refer them for prosecution. The auditor provided numerous examples of cases it reviewed in which BOI investigators did not adequately document their rationale for referring, or not referring, a case to prosecutors. Furthermore, the BOI does not routinely receive necessary information from Cal/OSHA inspectors about cases that the bureau is required to review for possible criminal conduct.

Public prosecutors as alternative enforcement

In recent years, the Legislature has leaned on public prosecutors to enhance the work of the DIR and its divisions. For example, AB 102 (Ting) Chapter 38, Statutes of 2023 provided \$18 million to create the Workers' Rights Enforcement Grant Program administered by the Labor Commissioners Office (LCO). This program provides grant funding that enables local public prosecutors to enforce existing laws related to wage theft and thereby supplement the LCO's work.

Funding targeted in this bill

The audit also looked at where Cal/OSHA's vacancy-related savings go. According to the auditor, "Cal/OSHA receives its funding mainly from special funds rather than from the State's General Fund, and the vacancy-related savings are likely split across several special funds, making them more difficult to track. Even so, we found indications that a significant portion of the vacancy-related savings may have simply added to unspent reserves in certain funds. For example, the largest of the special funds from which Cal/OSHA derives its revenue is the Occupational Safety and Health Fund. Upon appropriation by the Legislature, Cal/OSHA can use

this fund for any activities that support its work, and unspent funding adds to the fund balance. Cal/OSHA significantly underspent its budgeted appropriations for the Occupational Safety and Health Fund during our audit period, and the balance in this fund had grown to about \$201 million at the end of fiscal year 2023–24."²

This bill would open the Occupational Safety and Health Fund, or the Labor and Workforce Development Fund, upon appropriation from the Legislature, to create a five-year pilot program in Alameda and Santa Clara counties whereby the district attorneys in those counties would investigate workplace health and safety violations that result in a death or permanent disability to one or more employees. The author indicates that she has a parallel budget request to redirect funding from these two sources to the Alameda and Santa Clara County district attorneys to perform the investigation and prosecution of such violations.

According to the Author

"This Legislature has worked tirelessly to pass some of the strongest worker protections in the country. However, these laws are meaningless if not enforced. 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."

The author adds that the measure supports equity, per HR 39 (Gipson, 2021), in that "workplace injuries and fatalities in California disproportionately impact low-income, immigrant, and minority workers. According to the US Bureau of Labor Statistics, Hispanic and Latino workers make up half of workplace fatalities in the state (48-51 percent in recent years) despite not representing half of the total workforce.³ Additionally, immigrant and other vulnerable workers are less likely to report illnesses or injuries due to fear of employer reprisal. Without effective enforcement of our health and safety laws, bad employers are essentially operating with impunity. This must end."

Arguments in Support

The California Federation of Labor Unions, AFL-CIO, state in support that "this [measure] ensures that the most egregious workplace tragedies get the attention they deserve and that employers are held accountable. It also frees up BOI staff to focus on the thousands of cases that are currently going uninvestigated – helping to catch safety issues earlier and prevent more serious workplace injuries. California's 19 million workers deserve safe and healthy workplaces, and for their government to enforce the law when employers are uncompliant. AB 2321 is a commonsense measure that will support and enhance the work of Cal/OSHA and its BOI."

Arguments in Opposition

The California Chamber of Commerce is opposed and states that "First and foremost: prosecutors are not workplace safety experts, so forcing them into the driver's seat for investigations of all total disability or fatality cases will not improve the quality of that

² Cal/OSHA Audit, pp. 47-48

³ Fatal Work Injuries in California — 2023 : Western Information Office : U.S. Bureau of Labor Statistics. https://www.bls.gov/regions/west/news-release/2025/fatalworkinjuries_california_20250304.htm; Fatal occupational injuries in California in 2024 : U.S. Bureau of Labor Statistics. <https://www.bls.gov/iif/state-data/fatal-occupational-injuries-in-california-2024.htm>

investigation or case preparation. These cases are best handled by the Division's inspectors – who are more knowledgeable about workplace safety law – and employers' representatives – who are also knowledgeable about workplace safety."

FISCAL COMMENTS

According to the Assembly Appropriations Committee:

- 1) Ongoing cost pressures of an unknown amount, potentially in the millions of dollars annually, to appropriate funds to two prosecuting authorities to support their existing responsibility to prosecute cases referred by the BOI, as well as their new responsibility to investigate certain BOI cases (OSHF, LWDF, or General Fund (GF)). The author is requesting an appropriation of an unspecified amount of "unused" OSHF or LWDF funds in the 2026-27 state budget for this purpose.

Similarly, by requiring two local prosecuting authorities (Alameda and Santa Clara county district 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 two prosecuting authorities is contingent on the appropriation of sufficient funding, actual costs incurred by the prosecuting authority may exceed the appropriated amount.

- 2) 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.

- 3) 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).

VOTES

ASM LABOR AND EMPLOYMENT: 5-0-2

YES: Ortega, Elhawary, Kalra, Lee, Ward

ABS, ABST OR NV: Lackey, Chen

ASM APPROPRIATIONS: 11-3-1

YES: Wicks, Aguiar-Curry, Calderon, Caloza, Fong, Mark González, Krell, Pacheco, Pellerin, Sharp-Collins, Solache

NO: Hoover, Dixon, Tangipa

ABS, ABST OR NV: Ta

UPDATED

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