

Date of Hearing: August 20, 2025

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Buffy Wicks, Chair

SB 400 (Cortese) – As Amended June 30, 2025

Policy Committee: Labor and Employment

Vote: 7 - 0

Urgency: No

State Mandated Local Program: No

Reimbursable: No

SUMMARY:

This bill provides that an employer or contractor making an elective retroactive wage payment to a worker is not in violation of certain labor laws.

Specifically, this bill:

- 1) Allows, until January 1, 2029, a taxpayer, employer, contractor, or subcontractor to make an elective retroactive wage payment to a worker who performed work on a qualified renewable clean energy facility constructed or repaired in calendar years 2023 or 2024, for the sole purpose of making the taxpayer eligible for federal tax incentives under the Inflation Reduction Act of 2022 (IRA).
- 2) Provides that an elective retroactive wage payment does not, by itself, constitute a violation of certain labor laws related to wages, hours, and working conditions, including the Private Attorneys General Act (PAGA). Such provisions do not limit the authority of the Labor Commissioner (LC) to investigate or enforce the retroactive payment or other labor code violations.

FISCAL EFFECT:

Minor and absorbable cost to the LC.

COMMENTS:

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

SB 400 helps workers and employers alike. The bill will allow employers to receive a federal tax credit, while workers who were paid below the prevailing wage will receive a one-time retroactive payment to make up the difference. In one example, a clean energy operator in California will issue approximately \$4 million in elective pay to 110 workers who helped rebuild a solar facility, putting money directly into the hands of workers who need it most.

This bill is supported by MN8 Energy and the California State Association of Electrical Workers.

- 2) **IRA.** The IRA invests billions of federal dollars to incentivize private investments in clean energy technology, manufacturing, and innovation, resulting in the creation of new jobs and a reduction in energy costs. The IRA allows a taxpayer to benefit from certain tax credits if the taxpayer pays prevailing wage and utilizes registered apprentices for work on a clean energy project. Under federal law, a taxpayer that completed a clean energy project but did not meet labor standards to qualify for a federal tax credit under the IRA may make an elective retroactive wage payment to a worker to subsequently meet the requisite labor threshold and qualify for the federal tax credit.

This bill provides that such an elective payment does not constitute a violation of certain labor laws, including a violation enforceable through PAGA. According to MN8 Energy, which seeks to make such elective payments to qualify for IRA tax benefits, “their contractor and subcontractor have expressed concern that doing so could inadvertently expose them to liability under [PAGA] or state Wage and Hour laws” because the payments “might be mischaracterized as evidence of past violations.” Thus, this bill functions as a form of immunity to a taxpayer that makes an elective payment, instead of remedying a specific deficiency under existing state law that prevents such a payment from being made.

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