

SENATE THIRD READING  
SB 400 (Cortese)  
As Amended August 21, 2025  
Majority vote

## SUMMARY

Authorizes a taxpayer, employer, contractor, or subcontractor to voluntarily make an elective retroactive wage payment to workers who performed work on a qualified renewable clean energy facility pursuant to the federal Inflation Reduction Act of 2022 (IRA). This payment, by itself, does not constitute a violation of specified wage and hour laws or provisions of the Private Attorneys General Act (PAGA).

### Major Provisions

- 1) States that it is the intent of the Legislature, among other things, to support taxpayers and employers who voluntarily pay higher wages to clean energy workers in order to qualify for the larger tax incentives provided by the IRA to shield those taxpayers and employers from penalties or litigation for so doing.
- 2) Provides, notwithstanding any other provision of law, a taxpayer, employer, contractor, or subcontractor may voluntarily make an elective retroactive wage payment to workers who performed work on a qualified renewable clean energy facility pursuant to the IRA.
- 3) States that an elective retroactive wage payment made pursuant to 2) above does not, by itself, constitute a violation of specified wage and hour laws or provisions under PAGA.
- 4) Defines "elective retroactive wage payment" to mean a payment to workers who performed work on a qualified renewable clean energy facility pursuant to provisions of the IRA that meets all of the following conditions:
  - a) The renewable clean energy facility qualified for tax incentives pursuant to the IRA.
  - b) The elective retroactive wage payment is voluntarily paid to workers for work they performed installing, modifying, repairing, or replacing solar panels, inverters, battery energy storage systems, transformers, and any associated components at a facility that is eligible for federal tax incentives under the IRA, or regulations issued by the Internal Revenue Service and the United States Department of the Treasury.
  - c) The facility is not a public works project, as defined, and would not otherwise be subject to the requirements of the Davis-Bacon Act if the facility owner, employer, contractor, or subcontractor does not apply for the federal tax incentives available pursuant to the IRA, or pursuant to regulations issued by the Internal Revenue Service and the United States Department of the Treasury.
  - d) The elective retroactive wage payment is made voluntarily by the taxpayer, contractor, subcontractor, or employer pursuant to the IRA or regulations issued by the United States Department of the Treasury and Internal Revenue Service regarding wage requirements related to renewable electricity production tax incentives.

- e) The taxpayer, employer, contractor, or subcontractor's elective retroactive wage payment to any worker for work performed on the renewable energy facility was solely for the purpose of the application of a taxpayer, employer, contractor, or subcontractor for federal tax incentives pursuant to the IRA.
  - f) The taxpayer, employer, contractor, or subcontractor is in compliance with the applicable provisions of the IRA, and the applicable Internal Revenue Service or United States Department of the Treasury guidance and regulations related to renewable electricity production tax incentives.
- 5) Provides that 3) above does not apply to the following:
- a) Claims of retaliation, discrimination, or harassment.
  - b) Claims for the willful classification or misclassification of employees as independent contractors.
  - c) Violations of any other provision of law unrelated to the payment of retroactive prevailing wage correction payments in connection with the application for federal tax benefits pursuant to the IRA.
- 6) States that the above provisions apply only to renewable energy facility construction or repairs commenced on or after January 1, 2023, that were completed on or before December 31, 2024.
- 7) Provides that the above provisions do not limit the authority of the Labor Commissioner (LC) to investigate the applicability of this section to the retroactive correction payment of an employer, contractor, or subcontractor. This section does not limit the authority of the LC to investigate or enforce other violations of this code.
- 8) Sunsets the above provisions on January 1, 2029.
- 1) States that this act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety, as specified.

## COMMENTS

The IRA, signed by President Biden in 2022, represents the nation's largest investment in clean energy and the climate. The Act provides increased tax benefits to taxpayers who undertake clean energy projects provided the workers are paid prevailing wage and registered apprentices are utilized. Within its first year, the IRA could boast more than \$110 billion in new clean energy manufacturing investments and the creation of more than 170,000 clean energy jobs.<sup>1</sup> The labor standards required under IRA qualified projects basically mean that all laborers and mechanics are paid the applicable prevailing wage, including fringe benefits, for all hours performing

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<sup>1</sup> "White House Briefing Room, "FACT SHEET: One Year In, President Biden's Inflation Reduction Act is Driving Historic Climate Action and Investing in America to Create Good Paying Jobs and Reduce Costs," August 16, 2023.

construction, and in some cases alteration or repair, on the site of the work of a qualified facility.<sup>2</sup>

### **According to the Author**

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. SB 400 helps disadvantaged communities by ensuring clean energy workers, many from underserved backgrounds, receive the wages they've earned."

### **Arguments in Support**

MN8 Energy is in support and states, "MN8 Energy acquired and began operating a solar facility in Kings County. On May 26, 2023, a fire impacted roughly 30% of the 80.52 MW photovoltaic system. The company initiated a rebuild between September 2023 and December 2024 involving approximately 110 workers. At the time, MN8 was not aware of the optional Prevailing Wage and Apprenticeship (PWA) provisions of the IRA, which, if met, allow companies to claim enhanced tax credits. The company has since determined that it could qualify for those credits by retroactively compensating workers the difference between what they were paid and the applicable federal prevailing wage—approximately \$4 million in additional payments to those workers.

However, despite MN8's desire to make these supplemental payments voluntarily, their contractor and subcontractor have expressed concern that doing so could inadvertently expose them to liability under California's Private Attorneys General Act (PAGA) or state Wage and Hour laws. The payments, while functioning as a federal compliance bonus, might be mischaracterized as evidence of past violations—discouraging employers from taking good-faith steps to increase worker compensation.

SB 400 addresses this problem directly and appropriately. The bill clarifies that voluntary, retroactive wage payments made to meet the elective PWA standards of the IRA do not constitute a violation of California labor law and cannot give rise to a cause of action. It is a narrowly tailored measure that supports worker compensation and ensures that clean energy employers can comply with federal law without unintended legal exposure under state law."

### **Arguments in Opposition**

None on file.

## **FISCAL COMMENTS**

According to the Assembly Appropriations Committee:

Minor and absorbable cost to the LC.

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<sup>2</sup> U.S. Department of Labor, Wage and Hour Division, "Prevailing Wage and the Inflation Reduction Act."

**VOTES****SENATE FLOOR: 36-0-4**

**YES:** Allen, Alvarado-Gil, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Jones, Laird, Limón, McGuire, McNerney, Menjivar, Niello, Ochoa Bogh, Padilla, Pérez, Richardson, Seyarto, Smallwood-Cuevas, Stern, Strickland, Umberg, Wahab, Weber Pierson, Wiener  
**ABS, ABST OR NV:** Hurtado, Reyes, Rubio, Valladares

**ASM LABOR AND EMPLOYMENT: 7-0-0**

**YES:** Ortega, Flora, Chen, Elhawary, Kalra, Lee, Ward

**ASM APPROPRIATIONS: 15-0-0**

**YES:** Wicks, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Jeff Gonzalez, Solache, Ta, Tangipa

**ASSEMBLY FLOOR: 74-0-5**

**YES:** Addis, Aguiar-Curry, Ahrens, Alanis, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Ellis, Flora, Fong, Gabriel, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Kalra, Krell, Lackey, Lee, Lowenthal, Macedo, McKinnor, Muratsuchi, Nguyen, Ortega, Pacheco, Papan, Patel, Patterson, Pellerin, Petrie-Norris, Quirk-Silva, Ramos, Ransom, Celeste Rodriguez, Michelle Rodriguez, Rogers, Blanca Rubio, Sanchez, Schiavo, Schultz, Sharp-Collins, Solache, Soria, Stefani, Ta, Tangipa, Wallis, Ward, Wicks, Wilson, Zbur, Rivas  
**ABS, ABST OR NV:** Alvarez, Berman, Elhawary, Gallagher, Valencia

**UPDATED**

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