
UNFINISHED BUSINESS

Bill No: SB 400
Author: Cortese (D)
Amended: 9/3/25
Vote: 27 - Urgency

Prior votes not relevant, pursuant to Senate Rule 29.10(d).

ASSEMBLY FLOOR: 80-0, 9/11/25 - See last page for vote

SUBJECT: Labor: elective compensation under the Inflation Reduction Act of 2022

SOURCE: Author

DIGEST: This bill 1) 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); and 2) provides that this payment, by itself, does not constitute a violation of specified labor laws.

Assembly Amendments of 9/3/25 gut the previous provisions of this bill and instead authorize 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 IRA.

ANALYSIS:

Existing federal law:

- 1) Establishes the Davis-Bacon and Related Acts (DBRA), applicable to contractors and subcontractors performing work on federally-funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair of public buildings or public works. DBRA contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the local

prevailing wages and fringe benefits for corresponding work on similar projects in the area. (40 U.S.C. §3141)

- 2) Establishes the IRA, which generally provides enhanced tax benefits to taxpayers that meet DBRA prevailing wage and apprenticeship requirements on clean energy projects. (Public Law 117-169)

Existing state law:

- 1) Establishes within the Department of Industrial Relations the Division of Labor Standards Enforcement under the direction of the Labor Commissioner (LC), and empowers the LC to ensure a just day's pay in every work place and to promote justice through robust enforcement of labor laws. (Labor Code §79-107)
- 2) Specifies when wages must be paid for work performed in various positions and industries. (Labor Code §§201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5)
- 3) Imposes a civil penalty, in addition to any penalties that normally apply, to any employer who fails to pay the wages of their employees by the required time, as follows:
 - a) \$100 dollars for each failure to pay each employee for any initial violation;
 - b) \$200 dollars for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld, for any subsequent or intentional violation.(Labor Code § 210(a))
- 4) Provides that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. (Labor Code §510)
- 5) Defines "public works" to mean construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by a public utility company pursuant to order of the Public Utilities Commission (PUC) or other public authority. Public works also includes, among other things, irrigation work, street improvements, and tree trimming. (Labor Code §1720(a))

- 6) Requires, except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works. (Labor Code §1771)
- 7) Establishes the Private Attorneys General Act (PAGA), which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of the Labor Code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and others against whom a violation of the same provision was committed. (Labor Code §2699(a))

This bill:

- 1) States that it is the intent of the Legislature to, among other things:
 - a) Facilitate the construction, rebuild, repowering, and repair of facilities that advance the state's goals for the use of renewable energy in retail electricity sales including the use of tax incentives available to qualified projects and facilities pursuant to the IRA.
 - b) 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) Authorizes a taxpayer, employer, contractor, or subcontractor to voluntarily make an elective or 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 labor laws related to wages, hours, working conditions, and PAGA.
- 4) Defines "elective retroactive wage payment" as 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 specified, 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 is solely for the purpose of the application of a taxpayer, employer, contractor, or subcontractor for federal tax incentives pursuant to the IRA, and is in addition to wages otherwise paid pursuant to applicable law.
 - 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 these provisions do 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 payments in connection with the application for federal tax benefits pursuant to the IRA.
 - d) A taxpayer, employer, contractor, or subcontractor that has failed to pay, in full, wages otherwise due pursuant to applicable law, and has failed to cure any such violation.
- 6) Applies the above provisions only to renewable energy facility construction or repairs commenced on or after January 1, 2023 and completed on or before December 31, 2024.
 - 7) Provides that the above provisions do not limit the authority of the LC to investigate or enforce this section or any other violations of this code.
 - 8) Sunsets the above provisions on January 1, 2029.
 - 9) States that this act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety, as specified.

Background

Inflation Reduction Act (IRA). Over the course of 2021 and 2022, the federal government made significant investments in infrastructure and the green economy through the Infrastructure Investment and Jobs Act, the Inflation Reduction Act (IRA), and the CHIPS and Science Act. Combined, the money from these three pieces of legislation amounts to over a trillion dollars.

The IRA, signed into law on August 16, 2022, invested \$390 billion in climate and clean energy programs. This is the single largest climate investment in American history. IRA funding consists of grants, tax credits, loans, rebates, and direct federal spending. Under the IRA, taxpayers are eligible for increased tax benefits, if they meet prevailing wage and apprenticeship requirements on clean energy projects. In November of 2022, the Treasury and the IRS published guidance on the prevailing wage and apprenticeship requirements. In order to receive increased incentives, taxpayers had to meet the prevailing wage and apprenticeship requirements for facilities where construction began on or after January 29, 2023.

The Inflation Reduction Act's prevailing wage and apprenticeship provisions apply to the:

- Alternative Fuel Refueling Property Credit
- Production Tax Credit
- Credit for Carbon Oxide Sequestration
- Credit for Production of Clean Hydrogen
- Clean Fuel Production Credit
- Investment Tax Credit
- Advanced Energy Project Credit
- Energy Efficient Commercial Buildings Deduction

Inflation Reduction Act (IRA): A New Era. On President Trump's first day of his second term, he issued an executive order commanding federal agencies to pause the disbursement of funds under the IRA. In doing so, the President blocked congressionally approved spending and refused to honor contracts in which the federal government promised funding for states, cities, and other recipients. In April 2025, a federal judge ruled that federal agencies unlawfully froze funds under the IRA, and other climate and infrastructure spending laws, and ordered agencies to resume disbursing the money.

Furthermore, on July 4, 2025, President Trump signed into law H.R.1, commonly referred to as the "One Big Beautiful Bill Act," which significantly alters the IRA. Among other things, the law repeals electric vehicle tax credits, modifies eligibility for specified tax credits, and makes wind and solar projects ineligible for tax credits unless they either enter service before December 31, 2027, or begin construction within 12 months of the law's passage. H.R.1 does expand some IRA tax credits. For instance, it extends the clean fuel production tax credit through the end of 2029 and eases eligibility requirements.

Prior/Related Legislation

SB 150 (Durazo et al., Chapter 61, Statutes of 2023) required the LWDA, the Government Operations Agency, and the Transportation Agency to convene stakeholders and develop recommendations for procurement models to ensure that federal IIJA, IRA, and CHIPS Act investments include enforceable commitments to job quality and to consult with the Civil Rights Department, other relevant state agencies, and a UC research institution to develop and finalize recommendations by March 30, 2024

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 9/12/25)

California State Association of Electrical Workers
MN8 Energy

OPPOSITION: (Verified 9/12/25)

None received

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."

ASSEMBLY FLOOR: 80-0, 9/11/25

AYES: Addis, Aguiar-Curry, Ahrens, Alanis, Alvarez, Arambula, Ávila Farías, Bains, Bauer-Kahan, Bennett, Berman, Boerner, Bonta, Bryan, Calderon, Caloza, Carrillo, Castillo, Chen, Connolly, Davies, DeMaio, Dixon, Elhawary, Ellis, Flora, Fong, Gabriel, Gallagher, Garcia, Gipson, Jeff Gonzalez, Mark González, Hadwick, Haney, Harabedian, Hart, Hoover, Irwin, Jackson, Johnson, 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, Valencia, Wallis, Ward, Wicks, Wilson, Zbur, Rivas

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